EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2	)	
	)	
On Referral by the United States Court of Appeals for the Third Circuit	)	Internal File No. CCB/CPD 96-20
	)	
Combined Companies, Inc. and Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc.,	)	
	)	
Petitioners,	)	
	)	
and	)	
	)	
AT&T Corp.,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 14, 2003 **Released: October 17, 2003**

By the Commission:

I. INTRODUCTION

1. This Memorandum Opinion and Order addresses the Joint Petition for Declaratory Ruling filed by Petitioners Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. (the Inga Companies) and Combined Companies, Inc. (collectively Petitioners). Petitioners' requests for declaratory relief stem from a question referred to us, under the doctrine of primary jurisdiction, by the United States Court of Appeals for the Third Circuit.[1] The question referred by the Third Circuit is "'whether section 2.1.8 [of AT&T's Tariff FCC No. 2] permits an aggregator to

[1] *Combined Co., Inc., Winback and Conserve Program, Inc., One Stop Fin. Inc., 800 Discounts, Inc., and Group Discounts, Inc. v. AT&T Corp.*, No. 96-5185 (3d Cir. filed May 31, 1996)(*Third Circuit Opinion*); *see also Combined Companies, Inc., et al. v. AT&T Corp.*, Civil Action No. 95-908 (D.N.J. filed May 19, 1995)(*First District Court Opinion*); *Combined Companies, Inc., et al. v. AT&T Corp.*, Civil Action No. 95-908 (D.N.J. filed Mar. 5, 1996)(*Second District Court Opinion*).

transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.'"[2] Interpretation of AT&T's tariff is a matter within this agency's expertise.[3] We conclude that AT&T's tariff did not prohibit such a movement of traffic and thus permitted it. Accordingly, AT&T's conduct was unauthorized and violated section 203 of the Communications Act. We explain our conclusions below.

II. BACKGROUND

2. AT&T is a telecommunications carrier regulated under Title II of the Communications Act of 1934, as amended (the Act). At the time these events occurred, AT&T was a dominant provider of interstate telecommunications services and, as such, offered the services at issue under tariffs, which it filed with the Commission pursuant to section 203 of the Act.[4] The Inga Companies were non-facilities-based aggregator/resellers of AT&T's inbound 800 Wide Area Telecommunications Service (WATS).[5] Prior to June 17, 1994, the Inga Companies completed and signed AT&T's "Network Services Commitment Form" for WATS under AT&T's Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T's regular tariffed rates.[6] The CSTP II was set forth in AT&T's Tariff FCC No. 2 (Tariff).[7] The Inga Companies committed to aggregate $54 million worth of 800 services per year under their nine CSTP II plans.[8] This volume of traffic qualified for a discount of 28 percent off AT&T's regular tariffed rates – a 23 percent discount under the CSTP II plan, combined with an additional 5 percent discount available under the tariffed Revenue Volume Pricing Plan (RVPP).[9] The Inga Companies resold their AT&T's WATS service at a discount off AT&T's tariffed rates to third-party end-users, generally smaller business customers using 800 lines, which could not qualify individually for volume discounts.[10] These small businesses were the Inga Companies' customers.[11] The Inga Companies aggregated these end-users' 800 traffic under the CSTP II/RVPP.[12]

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[2] *See Third Circuit Opinion* at 3 (quoting *First District Court Opinion* at 15).

[3] *See Bell Atlantic-Delaware, Inc., et al. v. Global Naps, Inc.*, File No. E-99-22-R, Order on Reconsideration, 15 FCC Rcd 5997, 6005, para. 22 & n.55 (2000)(and cases cited therein); *rev. denied*, 247 F.3d 252 (D.C. Cir. 2001), *cert denied*, 534 U.S. 1079 (2002).

[4] *See First District Court Opinion* at 2 n.2. Subsection 203(a) of the Communications Act requires every common carrier to file with the Commission "schedules," *i.e.*, tariffs, "showing all charges" and "showing the classifications, practices, and regulations affecting such charges." 47 U.S.C. § 203(a).

[5] *See Third Circuit Opinion* at 2; *First District Court Opinion* at 3.

[6] Joint Petition for Declaratory Ruling, Internal File No. CCB/CPD 96-20 (filed July 15, 1996) (Petition) at 9; *see* Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration, CCB/CPD 96-20 (filed Aug. 26, 1996) (Opposition) at 4; *First District Court Opinion* at 3-4.

[7] *First District Court Opinion* at 3; *see generally* AT&T Corp. Further Comments, CCB/CPD 96-20 (filed Apr. 2, 2003) (AT&T Further Comments) at Attachment 1 (AT&T Tariff FCC No. 2 at § 3.3.1.Q. (AT&T 800 Customer Specific Term Plan II), 18th rev. p. 61.16 (eff. Dec. 12, 1994), 6th rev. p. 61.16.1 (eff. Mar. 11, 1994), 12th rev. p. 61.17 (eff. Mar. 11, 1994)).

[8] *See First District Court Opinion* at 7, 8 n.8; *cf.* Petition at 11 (Inga Companies committed to a volume of $4 million per month).

[9] *See First District Court Opinion* at 3-5.

[10] *First District Court Opinion* at 3-4.

[11] *See First District Court Opinion* at 3; AT&T Further Comments at 6-10 (citing, *inter alia*, *AT&T Corp. v. Winback and Conserve Program, Inc.*, File No. E-97-02, Memorandum Opinion and Order, 16 FCC Rcd 16074, 16075, para. 3 (2001)).

[12] *First District Court Opinion* at 3-4.

3. Section 2.1.8 of AT&T's Tariff FCC No. 2 provided for the transfer or assignment of tariff plans.[13] In December 1994, the Inga Companies and CCI, a new or previously inactive company,[14] executed certain Transfer of Service Agreement and Notification (TSA) forms transferring the nine Inga Company CSTP II/RVPP plans to CCI.[15] They requested that AT&T permit the transfer of these plans to CCI.[16] Although AT&T initially refused to accept the transfer unless CCI provided a deposit of $13,540,000,[17] the transfer ultimately was effected without a deposit, under a May 1995 order of the United States District Court for the District of New Jersey.[18] Thus, CCI was the legitimate transferee of the Inga Companies' CSTP II/RVPP plans and customer of AT&T.[19]

4. AT&T sold inbound and outbound services under Contract Tariff 516 (CT 516) to PSE, an aggregator/reseller unrelated to either the Inga Companies or CCI.[20] With an annual commitment of $4 million, which included 15 million minutes of 800 services per year, the CT 516 discount available to PSE was 66 percent off AT&T's regular tariffed rates.[21] CCI wanted the CT 516 discount, which was significantly larger than that available under its CSTP II/RVPP plans. Accordingly, CCI and PSE jointly executed and submitted to AT&T nine TSA forms for each of the nine plans.[22] At the bottom of each TSA, in handwriting, these parties directed AT&T to move the "traffic only" on each plan to PSE.[23] The January 13 letter, under which these nine TSAs were forwarded, directs AT&T to "move the locations associated with these plans [but] not ... in any way to discontinue the plans."[24] In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSI CSTP II/RVPP plans, but not to move the actual plans themselves.[25] Having refused to recognize the original transfer from the

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[13] *First District Court Opinion* at 6; *see* Exhibit I to Petition (AT&T Tariff FCC No. 2 at § 2.1.8 (Transfer or Assignment), 14th rev. p. 20 (eff. Apr. 21, 1994)).

[14] *First District Court Opinion* at 7-8 & n.6; Opposition at 4.

[15] *See First District Court Opinion* at 7.

[16] *See First District Court Opinion* at 7.

[17] *First District Court Opinion* at 7. This constituted one quarter of the companies' annual revenue commitment. *Id.* at 8.

[18] *Combined Companies, Inc., etc. and Winback & Conserve Program, Inc., et al. v. AT&T Corp.*, Civil Action No. 95-908, Preliminary Injunction (filed May 19, 1995) (*First Preliminary Injunction*); *see generally First District Court Opinion.* The district court found that section 2.1.8 of AT&T's tariff, which governed the transfer of plans, was not conditioned upon the provision of a deposit and that the Inga Companies had otherwise met the requirements of section 2.1.8. *See First District Court Opinion* at 20-21; *accord* 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).

[19] Because the district court ultimately found that AT&T's refusal to accept the transfer from the Inga Companies to CCI was improper and ordered AT&T to accept it, we assume the legitimacy of that transfer, retroactive to the time when it should have occurred.

[20] *See First District Court Opinion* at 4-5; Petition at 10-11. According to the record, PSE "combine[d] outbound calling services with its [800] IWATS resale operations, and thus – presumably – can cater more to the overall needs of the small businesses it services." *First District Court Opinion* at 4-5.

[21] *See First District Court Opinion* at 5; AT&T Contract Tariff FCC No. 516 at § 3 (eff. Oct. 20, 1993).

[22] *First District Court Opinion* at 10; *see* Exhibit H to Petition.

[23] *See First District Court Opinion* at 10; Exhibit H to Petition.

[24] *See* Exhibit H to Petition.

[25] *See First District Court Opinion* at 10.

Inga Companies to CCI, AT&T also refused to move the traffic from CCI to PSE.[26]

5. The Inga Companies and CCI sued AT&T in the United States District Court for the District of New Jersey in February, 1995, alleging violations of the Communications Act in connection with AT&T's refusal to accept the transfer from the Inga Companies to CCI; and refusal to move traffic from CCI to PSE.[27] On plaintiffs' motion for a writ of peremptory mandamus (preliminary injunction) under 47 U.S.C. § 406 (Mandamus to Compel Furnishing of Facilities), the district court entered a preliminary injunction in May 1995, ordering AT&T to accept the first transfer.[28] To determine whether it should also order AT&T to move the traffic from CCI to PSE, the court requested, under the primary jurisdiction doctrine, that the Commission interpret a certain section of AT&T's tariff.[29] Specifically, the district court referred to the Commission "the issue of the transfer of the aforesaid plans and/or their traffic as between Combined Companies, Inc. and Public Service Enterprises of Pennsylvania, Inc. and its compliance or not with the terms of the governing tariff."[30]

6. Neither party brought the primary jurisdiction question to the agency.[31] Instead, the aggregators went back to the district court.[32] On reconsideration, in a March 5, 1996 decision, the district court made its own substantive finding on the previously referred issue.[33] Notwithstanding its intent to "defer to the FCC on the interpretation of the Tariff provisions governing plaintiffs' proposed transaction," but contemplating a Commission ruling favorable to the aggregators, the court entered a preliminary injunction pending outcome of the Commission determination, and ordered AT&T to "recognize the transfer" of traffic between CCI and PSE and to provide service at the CT 516 rates.[34] AT&T appealed the district court's order to the Third Circuit, which, on May 31, 1996, vacated the lower court's March 5 decision as inconsistent with the primary jurisdiction referral, and reordered the parties to bring the issue to the Commission.[35]

7. On July 15, 1996, the aggregators filed a petition with the Commission in which, "based on established Commission practice, policies, and precedents, the plain language of § 203 of the Communications Act of 1934, as amended, F.C.C. Rule 61.54(j), and Sections 201 and 202 of the Act,"

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[26] *First District Court Opinion* at 10. *Compare* Petition at 13 ("Initially AT&T asserted that CCI was not the 'customer of record' for the Plans (based on what the District Court later determined was AT&T's unlawful refusal to accept the Inga Companies' transfer per the TSAs as determined by the District Court), and, hence, had no authority to order the transfer of the traffic under the Plans to PSE's Contract Tariff 561") *with* Opposition at 5 ("AT&T objected on the grounds that Section 2.1.8 did not authorize the transfer of a plan unless the transferee, in this case PSE, assumes the original customer's liability and that the location-only transfer violated the 'fraudulent use' provisions of Section 2.2.4 of its tariff because the transfer had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall and termination charges." (footnote omitted)).

[27] *See generally First District Court Opinion*; Opposition at 5-6.

[28] *First District Court Opinion* at 1, 21; *see First Preliminary Injunction.*

[29] *See First District Court Opinion* at 15-17.

[30] *First Preliminary Injunction*; *see also First District Court Opinion* at 15 ("whether section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction").

[31] *See Third Circuit Opinion* at 3-4, 6.

[32] *See Third Circuit Opinion* at 3-4, 6.

[33] *See generally Second District Court Opinion.*

[34] *Second District Court Opinion* at 2 n.2, 16; *Combined Companies, Inc., et al. v. AT&T Corp.*, Civil Action No. 95-908, Preliminary Injunction (filed Mar. 5, 1996) (*Second Preliminary Injunction*).

[35] *See Third Circuit Opinion* at 7-8.

they sought declaratory rulings on four issues.[36] By separate cover motion, the aggregators also sought expedited consideration of their petition for declaratory ruling because, they alleged, AT&T was unlawfully billing certain charges to the aggregators' end-users.[37] AT&T filed Comments in Opposition on August 26, 1996, and Petitioners filed Reply Comments on September 23, 1996.[38] On February 13, 2003, the Bureau released a Public Notice inviting comment on two discrete questions that were not squarely addressed by the parties on the prior record.[39] Specifically, the Bureau first asked the parties to "comment on the nature of the relationship, if any, between AT&T and the end-user customers of AT&T's customers, under AT&T's Tariff FCC No. 2 generally, and specifically under the tariff provisions governing the RVPP and CSTP II Plans at issue in this matter."[40] Second, the Bureau asked the parties to "comment on the remedy that AT&T's Tariff FCC No. 2 specifies that AT&T may exercise if AT&T has reason to believe that its customer is violating section 2.2.4.A.2 of that tariff by '[u]sing or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by ... [u]sing fraudulent means or devices, tricks, [or] schemes.'"[41] Comments were filed in response to this Public Notice.[42]

III. DISCUSSION

A. Whether AT&T's Tariff Permitted the Movement of End-User Traffic Without The Plans

8. The district court asked "whether section 2.1.8 [of AT&T's Tariff] permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction."[43] Similarly,

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[36] *See* Petition at 7-8.

[37] Joint Motion for Expedited Consideration of the Joint Petition for Declaratory Ruling, Internal File No. CCB/CPD 96-20 (filed July 15, 1996) (Joint Motion for Expedited Consideration).

[38] *See* Opposition; Joint Reply of Petitioners, CCB/CPD 96-20 (filed Sept. 23, 1996) (Reply).

[39] *Further Comment Requested on the Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2,* Internal File No. CCB/CPD 96-20, Public Notice, 18 FCC Rcd 1887 (2003) (*Second Public Notice*). The deadline for filing further comments was extended twice. *See Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2,* Internal File No. CCB/CPD 96-20, Order, 18 FCC Rcd 3284 (WCB 2003); *Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2,* Internal File No. CCB/CPD 96-20, Order, 18 FCC Rcd 5713 (WCB 2003).

[40] *Second Public Notice*, 18 FCC Rcd at 1887.

[41] *Second Public Notice*, 18 FCC Rcd at 1887-88.

[42] *See* Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., CCB/CPD 96-20 (filed Apr. 2, 2003); AT&T Further Comments; Comments of Joseph Kearney, CCB/CPD 96-20 (filed Apr. 2, 2003); Comments of Verizon, CCB/CPD 96-20 (filed Mar. 6, 2003); Reply Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., CCB/CPD 96-20 (filed Apr. 15, 2003); AT&T Corp. Further Reply Comments, CCB/CPD 96-20 (filed Apr. 15, 2003); *see also* Letter from Alfonse G. Inga to Marlene Dortch, Secretary, FCC (filed Feb. 28, 2003); Letter from Alfonse G. Inga, President, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed Apr. 23, 2003); Letter from Aryeh Friedman, Senior Attorney, AT&T, to Judith Nitsche, Assistant Division Chief, Pricing Policy Division, FCC (filed Apr. 28, 2003); Letter from Alfonse G. Inga, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed May 5, 2003).

[43] *First District Court Opinion* at 15; *see also Third Circuit Opinion* at 3. Similarly, in its ordering clause, the district court questioned whether the transfer of traffic without the CSTP II Plans "compli[ed] or not with the terms of the governing tariff." *First Preliminary Injunction* at 2.

petitioners' first request for declaratory relief asks the Commission to find that "[a]t the time of the attempted transfer ... in or about January, 1995, by CCI to PSE of the end user traffic under the CSTP II plans held by CCI, neither Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, nor any other provision of AT&T's Tariff ... prohibited CCI from transferring that traffic without also transferring the CSTP II plans with which that traffic was associated."[44] We conclude that section 2.1.8 of AT&T's tariff did not address or govern CCI's and PSE's request and that its respective tariffs with CCI and PSE permitted the movement of traffic at issue here.

1. Section 2.1.8

9. In court and before the Commission, AT&T argues that section 2.1.8 of Tariff No. 2 did not authorize the transfer of traffic without a plan unless the transferee assumed the original customer's liability.[45] In January 1995, when these events occurred, section 2.1.8 of AT&T's Tariff provided that a customer could transfer "WATS" to a "new Customer" only if the new customer confirmed "in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment."[46] AT&T explains that in this context "WATS" means CSTP II plans.[47] We conclude that section 2.1.8 of AT&T's Tariff did not address – and therefore did not preclude or otherwise govern – the movement of

[44] Petition at 7-8. Tracking the language of section 2.1.8, petitioners refer to the requested movement of traffic from CCI to PSE as a "transfer (assignment)." *See, e.g.*, Petition at 7-8 (Requests No. 1, 3). AT&T uses the term "transfer." *See* Opposition. We find that the relocation of end-user traffic from CCI to PSE would simply have been a movement of traffic from one AT&T aggregator to another. We note that the agreement between CCI and PSE expressly provided for the return of accounts to CCI upon request. *See* Exhibit G to Petition. On a separate point, we note that the deposit provision of AT&T's tariff is not implicated here. In their first and third requests, petitioners seek, *inter alia*, declarations that AT&T had no basis to require a deposit to effect the movement of traffic without the associated plans. *See* Petition at 7-8. AT&T, however, does not argue that any deposit was required to effect the movement of traffic from CCI to PSE and notes that the deposit requirement related to the earlier transfer from the Inga Companies to CCI. *See* Opposition at 9 n.8.

[45] *See* Opposition at 5; *see also First District Court Opinion* at 10.

[46] The full text of section 2.1.8 is as follows –

> Transfer or Assignment – WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, provided that:
>
> A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the new Customer.
>
> B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
>
> C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
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> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3). Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 Service telephone number.

Exhibit I to Petition (AT&T Tariff FCC No. 2, 14th rev. p. 20, (eff. Apr. 21, 1994)).

[47] Opposition at 10.

end-user traffic from one aggregator to another, as CCI and PSE sought to effect in this case.[48] Section 2.1.8 concerned the wholesale transfer of "WATS" (which, according to AT&T itself, means "plans") from one customer to another. As such, its purpose was to maintain intact the balance of obligations and benefits between parties under the tariff when one customer stepped into the shoes of another. Thus, when, in December 1994, the Inga Companies transferred their CSTP II/RVPP plans to CCI, they were required to meet the conditions of section 2.1.8. Here, by contrast, CCI sought to move only the end-user traffic it had aggregated under its CSTP II out of that plan. PSE, in turn, sought to move that traffic into its CT 516. CCI did not seek to transfer the CSTP II/RVPP plans wholesale to PSE. Rather than a single transfer request, here CCI and PSE effectively made two requests: one by CCI to AT&T to decrease its traffic; and another by PSE to AT&T to increase its traffic. CCI and PSE retained the benefits and obligations of their respective agreements with AT&T. We note in this regard that both the forms submitted to AT&T and the agreement between CCI and PSE stated that CCI would continue to subscribe to its existing CSTP II plans.[49] Thus, CCI still would have to meet its tariffed commitments, without the use of the traffic moved to PSE, and AT&T also would remain obligated to CCI under the terms of Tariff No. 2.[50] The moved traffic would be used to meet PSE's CT 516 volume commitments and, once moved, would no longer be associated with CCI's CSTP II. If the traffic were moved away from CCI under Tariff 2, to PSE under Contract Tariff 516, AT&T would get less money for the same traffic – the traffic would be discounted 66 percent instead of 28 percent.[51] Implementing the carriers' request required AT&T only to move traffic – first, out of CCI's CSTP II, and second, into PSE's CT 516. As to whether the carriers' requests were permissible, we note that AT&T's tariffs with these carriers did not prohibit the addition or subtraction of traffic.[52] Accordingly, in response to the district court's question, "whether

[48] Ambiguities in a tariff are to be resolved against the carrier and favorably to customers. *The Associated Press Request for Declaratory Ruling*, File TS-11-74, Memorandum Opinion and Order, 72 FCC 2d 760, 764-65, para. 11 (1979) (citing *Commodity News Services, Inc. v. Western Union*, 29 FCC 1208, 1213, para. 3, *aff'd*, 29 FCC 1205 (1960)).

[49] *See* Exhibits G and H to Petition.

[50] CCI and PSE did agree that the traffic could be returned to CCI upon 30 days written notice from CCI that AT&T required CCI to meet its commitments. *See* Exhibit G to Petition. Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to enable it to meet any CSTP II obligations. *Cf.* Reply at 10 (arguing CCI would receive more net income, and thus have more money available to pay any charges, after the traffic was moved to PSE). We do not speculate whether the traffic ever would have been moved back or whether it or some other development would have satisfied CCI's CSTP II commitments because AT&T did not move the traffic from CCI to PSE.

[51] *See First District Court Opinion* at 5. Exhibit G to the Petition, a letter agreement between CCI and PSE dated January 16, 1995, explains that, once the traffic was moved: (1) CCI's end-users (formerly the Inga Companies' end-users) would "be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount"; (2) CCI would get 80 percent "earned credit" for this traffic from PSE; (3) CCI would continue to be responsible to AT&T for any commitment associated with the CSTP II Plans (which would not be discontinued); and (4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required CCI to meet its commitments. *See* Exhibit G to the Petition. Thus, the traffic would be discounted 66 percent instead of 28 percent and the end-users would receive a discount off AT&T's standard tariffed rates greater than the portion of the 28 percent they had received when their traffic was associated with the CSTP II plan. *See First District Court Opinion* at 3-5. The discount differential would be apportioned between CCI and PSE according to their letter agreement. *See also* n.66, *infra*.

[52] *See generally* AT&T Tariff FCC No. 2; AT&T Contract Tariff FCC No. 516. As AT&T concedes, the end-users or "locations," were CCI's customers, not AT&T's. *See* AT&T Further Comments at 6-10 (citing, *inter alia*, *AT&T Corp. v. Winback & Conserve Program, Inc.*, 16 FCC Rcd at 16075, para. 3; *First District Court Opinion* at 3); *see also MCI Telecommunications Corp v. AT&T*, File No. E-90-28, Order, 7 FCC Rcd 5096, 5100, para. 20 (CCB 1992). Because these end-users did not choose AT&T as their primary interexchange carrier, AT&T had neither proprietary interest in these individual end-user locations nor an expectation of revenue from them. *See Hi-Rim Communications, Incorporated v. MCI Telecommunications Corporation*, File No. E-96-14, Memorandum Opinion (continued....)

section 2.1.8 [of AT&T's Tariff] permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction,"[53] we conclude that section 2.1.8 of the tariff did not address or govern the movement of traffic without a plan and that AT&T's respective tariffs with CCI and PSE permitted it.

2. The "Fraudulent Use" Provisions

10. Petitioners' first request for declaratory relief goes beyond section 2.1.8 and asks the Commission to find that "[a]t the time of the attempted transfer ... in or about January, 1995, by CCI to PSE of the end user traffic under the CSTP II plans held by CCI, neither Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, *nor any other provision of AT&T's Tariff F.C.C. No. 2*, prohibited CCI from transferring that traffic without also transferring the CSTP II plans with which that traffic was associated."[54] Here and before the district court, AT&T argues that the proposed "location-only transfer violated the 'fraudulent use' provisions of Section 2.2.4 of its tariff," thus justifying AT&T's refusal to accept the transfer from CCI to PSE.[55] It claims that the transfer from CCI to PSE "had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall ... charges"[56] because CCI's entire revenue stream would transfer to PSE, but PSE would have no corresponding obligation to pay any shortfall charges under the CSTP II.[57] Thus, AT&T argues "if only the traffic on the plans and not the plans themselves were transferred to PSE, *the liability for shortfall . . . charges attendant thereto would then be vested in CCI:* an empty shell."[58] Further, "[w]ithout the revenue generated by the traffic under the plans, CCI would have no income and no means of backing the responsibilities it maintained after the CCI/PSE transfer of traffic."[59] AT&T claims that, based upon statements made by Alfonse Inga, the owner of the Inga companies, it had reason to believe that CCI's proposed transfer was an attempt to avoid liability for shortfall charges under the Tariff.[60] Accordingly, AT&T argues, it had the right under section 2.2.4 to refuse to accept the transfer to PSE.[61]

11. Based upon our review of AT&T's tariff, we conclude that, even assuming that AT&T reasonably suspected a violation of the "fraudulent use" provisions of its tariff – which we do not decide – those provisions did not authorize AT&T to refuse to move the traffic from CCI to PSE. If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. Further, CCI (as well as the Inga companies[62]),

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(...continued from previous page)
and Order, 13 FCC Rcd 6551, 6559 para. 13 (CCB 1998). Accordingly, AT&T could not refuse to move them out of CCI's CSTP II and into PSE CT 516. The fact that CCI sought to move all of its end-user locations, rather than just one or a few locations, did not confer a right on AT&T where none otherwise existed.

[53] *First District Court Opinion* at 15.

[54] Petition at 7-8 (emphasis added); *see also* n.44, *supra.*

[55] Opposition at 5 (footnote omitted); *see also First District Court Opinion* at 10.

[56] Opposition at 5. Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

[57] Opposition at 5, 12.

[58] *First District Court Opinion* at 10 (emphasis added); *see* Opposition at 12.

[59] *First District Court Opinion* at 10; *see* Opposition at 12.

[60] Opposition at 5, 11-12.

[61] Opposition at 5; AT&T Further Comments at 10-11.

[62] *See First District Court Opinion* at 9.

but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans. Once all of its traffic was moved to PSE, CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans. AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question.

12. Even assuming that AT&T did have reason to believe that the proposed movement of traffic from CCI to PSE violated section 2.2.4 of its tariff, AT&T did not avail itself of the associated remedy that was specified in its tariff. Section 2.2.4, which AT&T cites in support of its argument, was titled "Fraudulent Use" and provided that --

> The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:
>
> A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:
>
> . . . .
>
> 2. Using fraudulent means or devices, tricks, [or] schemes ....[63]

Section 2.8.2 of the Tariff, titled "Interference, Impairment or Improper Use," however, specified the remedy that AT&T could employ if it suspected fraudulent use under section 2.2.4.[64] That section provided that –

> The Company may take immediate action to *temporarily suspend service* when a Customer violation results in any of the following:
>
> . . . .
>
> -- circumvents the Company's ability to charge for its services as specified in Section 2.2.4 (Fraudulent Use) preceding . . . .
>
> . . . .
>
> In such cases, the Company will make reasonable effort to give the Customer prior notice *before suspending service.*
>
> . . . .
>
> When a violation results in the temporary suspension of service ... [this] restriction[] will be removed when the Customer is in compliance with the [tariffed] regulations and so advises the Company.[65]

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[63] *See* Exhibit 7 to Reply; Attachment 4 to AT&T Further Comments (AT&T Tariff FCC No. 2 at § 2.2.4 (Fraudulent Use), 11th rev. p. 21 (eff. July 28, 1994), 5th rev. p. 22 (eff. July 28, 1994)); *see also* Opposition at 5, 9-14; AT&T Further Comments at 10.

[64] For purposes of this discussion, we use the term "fraud" to mean the type of conduct described in AT&T's tariff rather than conduct that would meet a legal definition of fraud.

[65] *See* AT&T Further Comments at Attachment 5 (AT&T Tariff FCC No. 2 at § 2.8.2 (Interference, Impairment or Improper Use), 6th rev. p. 44 (eff. July 28, 1994)) (emphasis added); *see also id.* § 2.8.1 ("General – The Company may take immediate action to protect its services or interests when certain regulations contained in this tariff are (continued....)

AT&T, however, did not temporarily suspend service to CCI. Instead, it simply refused, in perpetuity, to move the traffic to PSE.[66] If AT&T suspected fraud, as it claims, it should have suspended CCI's service.[67] It did not do so. AT&T's refusal to move the traffic was not the tariffed remedy for fraudulent use.

13. Because AT&T did not act in accordance with the "fraudulent use" provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon any other provisions of its tariff to justify its conduct.[68] Accordingly, we grant Petitioners' first request for declaratory relief and find that, at the time CCI attempted to move to PSE the traffic that CCI had been using to satisfy its CSTP II commitments, neither Section 2.1.8 of AT&T's Tariff FCC No. 2, nor any other provision of AT&T's Tariff FCC No. 2, prohibited it from moving that traffic without the

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(...continued from previous page)
violated. The specific regulations involved and the action(s) which will be taken by this Company are as specified in 2.8.2, 2.8.3 and 2.8.4 following."). We reject AT&T's argument that these provisions authorized AT&T to "suspend the customer's *right to transfer* service." *See* Opposition at 11 n.11 (emphasis added); *see also* AT&T Further Comments at 11. Pursuant to Rule 61.2, titled "Clear and explicit explanatory statements," as in effect in January 1995, "[i]n order to remove all doubt as to their proper application, all tariff publications must contain clean [sic] and explicit explanatory statements regarding the rates and regulations." 47 C.F.R. § 61.2 (1994). It is a well settled rule of tariff interpretation that "'[t]ariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, for the user cannot be charged with knowledge of such intent or with the carrier's canon of construction.'" *Associated Press Request for a Declaratory Ruling*, 72 FCC 2d at 764-65, para. 11 (quoting *Commodity News Services, Inc. v. Western Union*, 29 FCC at 1213, para. 2). Accordingly, if AT&T intended the term "temporarily suspend service" to mean "permanently suspend the right to move traffic to another Customer" it should have said so. To quote the district court, "Words mean what they say. Rules should not be changed in the middle of the game; and certainly not without notice." *First District Court Opinion* at 21.

[66] This enabled AT&T to continue collecting revenue on the CSTP II traffic aggregated by CCI and at the higher CSTP II rate, rather than the CT 516 rate. Under the billing arrangement between AT&T and petitioners, AT&T billed the end-user directly, calculating into the bill a secondary discount, which the aggregator allotted to the end-user in question. AT&T then paid the aggregator the difference between the aggregator's CSTP II/RVPP discount and the percentage discount allotted to the end-user. The sum remitted by AT&T to the aggregator constituted the aggregator's income, from which it derived its operating costs and profits. *First District Court Opinion* at 4; *see also* Petition at 10. If AT&T had suspended service as its tariff permitted, it would not have collected any revenue at all under these accounts, rather than, as it did, continue to collect under the CSTP II. Although suspension was clearly a less attractive alternative than continuing to collect revenue at the CSTP II rates, suspension was the only remedy available to AT&T under the terms of its tariff for the type of "fraud" AT&T alleges it suspected.

[67] As discussed in n.65, *supra*, Commission Rule 61.2 requires that tariff provisions be explicit. Rule 61.54(j) further required that "[a] special rule, regulation, exception or condition affecting a particular item or rate *must be specifically referred to in connection with such item or rate.*" 47 C.F.R. § 61.54 (1994) (emphasis added). Consistent with these rules, section 2.8 of AT&T's tariff specified the precise remedy to be applied upon the occurrence of different enumerated events. For example, section 2.8.2 provided that when a customer failed to comply with sections 2.2 (Use), 2.7.2.C (Interference and Hazard), 2.7.8.A (Answer Supervision), 2.7.8.D (Customer-provided Communications System Failures), or 2.7.9 (Minimum Protection Criteria), the remedy was to deny requests for additional service and/or temporarily suspend service "on ten days' written notice by certified U.S. Mail to the Customer." *See* AT&T Further Comments at Attachment 5 (AT&T Tariff FCC No. 2 at § 2.8.2, 6th rev. p. 44 (eff. July 28, 1994)). Section 2.8.3 provided for disconnection of service and/or denial of requests for additional WATS in the event of a violation of section 2.5.3, governing nonpayment of charges. *See* Attachment 5 to AT&T Further Comments (AT&T Tariff FCC No. 2, 4th rev. p. 44.1 at § 2.8.3 (eff. Aug. 11, 1994)). Section 2.8.4 permitted AT&T, "immediately and upon written notice to the Customer," to "restrict, suspend or discontinue providing ... service" for violations of section 2.2.3.C or D. *Id.*

[68] *See* Opposition at 10-14; AT&T Further Comments at 3-5, 10-11.

CSTP II plans.[69]

B. Whether a Tariff Revision May Have Retroactive Effect

14. In their second request for declaratory relief, petitioners ask the Commission to find that "[u]nder standard tariffing law, principles, policies, and as required by the plain language of Section 203 of the Act, AT&T had no legal basis and could not have effectively tariffed any changes or additions to Section 2.1.8 or any other published provision of its Tariff F.C.C. No. 2, subsequent to January 1995, which could have substantively affected CCI's right to assign the traffic under its CSTP II plans to PSE in January, 1995."[70] AT&T does not address the retroactive application of tariff revisions.[71] We also do not understand AT&T to argue that any revisions to its tariff that became effective after January 1995 govern the resolution of this matter. We decline to rule on this request because the issue is moot.

15. The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[72] When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission will seek, in exercising its discretion, to resolve issues arising under the Act that are necessary to assist the referring court. Resolution of this issue is not necessary to assist the district court. After AT&T refused to permit petitioners to move the traffic, it filed Transmittal 8179 with the Commission in February 1995, which sought to amend Tariff No. 2. The district court's May 1995 primary jurisdiction referral to the Commission was based, in part, upon AT&T's contention that the Commission's consideration of Transmittal No. 8179 would clarify whether CCI was entitled, under the tariff, to move the traffic without the plans to PSE.[73] According to the record, however, AT&T ultimately withdrew Transmittal 8179 on June 2, 1995.[74] Thus, Transmittal 8179 never became effective.[75] Since AT&T did not amend its tariff, our analysis of petitioners' retroactivity question would not assist the court in resolving this matter. Nor does either party explain how consideration of this question would resolve a controversy or remove any uncertainty. The issue is moot and, in our discretion, we decline to address it.

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[69] *See* Petition at 7-8.

[70] Petition at 8.

[71] *See generally* Opposition; AT&T Further Comments.

[72] 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

[73] *See First District Court Opinion* at 12, 16-17; *Second District Court Opinion* at 3-4, 13; *see also* Petition at 14-16 & n.7 (quoting AT&T's Brief filed in 1995 with the district court ("Transmittal 8179 … make[s] explicit AT&T's implicit rights under the tariff. Accordingly, the proceeding in the FCC will resolve that issue ...."). The district court found that *Mical Communications, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031 (10th Cir. 1993), was persuasive authority on one of the factors relevant to the primary jurisdiction referral: whether a decision by the court prior to an Commission response to a petition pending before that agency might result in conflicting decisions. *See First District Court Opinion* at 14 n.10; *see also* Petition at 14-15 n.7 (quoting AT&T's Brief filed in 1995 with the district court). A tariff transmittal, however, is a different kind of administrative filing than the petition for declaratory ruling, *see Mical*, 1 F.3d at 1037, that was at issue in the *Mical* case. As we discuss in Section III.C, below, a tariff transmittal is a carrier-initiated document which, if not withdrawn or deferred by the carrier, or suspended or rejected by the Commission, becomes effective, *i.e.*, modifies the tariff, within a certain number of days from the transmittal filing date. *See* 47 U.S.C. § 203(a), (b); 47 C.F.R. § 61.58(a), (b). Until the transmittal becomes "effective" it is not part of the tariff. In the interim, the carrier has the power to defer the effective date of a particular transmittal, file an amended version of it, or, as AT&T did in this matter, withdraw it.

[74] *Second District Court Opinion* at 4.

[75] *See Second District Court Opinion* at 4.

C. Whether AT&T was Authorized to Refuse to Permit the Movement of Traffic From One Reseller to Another

16. Petitioners' third request for declaratory relief asks the Commission to find that "[s]ince neither Section 2.1.8 of AT&T's FCC Tariff No. 2, nor any other provision of AT&T's duly published tariff prohibited CCI from transferring that traffic without also transferring the CSTP II plans with which that traffic was associated ..., AT&T had no legal basis to refuse to accept the transfer ... of that traffic from CCI to PSE."[76] We agree with petitioners that, because AT&T's tariff did not prohibit the movement of traffic without the plans, AT&T's refusal to move the traffic was unauthorized.

17. In 1995, AT&T, as well as all common carriers of interstate and foreign telecommunications, was required, under section 203 of the Act, to file with the Commission one or more "schedules" of its charges and the classifications, practices, and regulations affecting such charges.[77] With respect to the services at issue in the instant proceeding, this "schedule" was AT&T's Tariff FCC No. 2. Once filed, a tariff is a public document.[78] It defines the terms and conditions upon which a carrier offers and provides services to its customers.[79] Tariffed charges, classifications, regulations or practices may be changed only after notice is given to the Commission and the public.[80] The Commission regulates the substance of tariff provisions and is authorized to suspend or reject the effectiveness of a proposed tariff provision when it believes such provision will violate the Act.[81] When, as here, service is provided pursuant to a filed tariff, the tariff controls the rights and responsibilities of the customer and the carrier, as a matter of law.[82] Thus, the "filed tariff doctrine" requires carriers, as well as their customers, to abide by the terms of the tariff and precludes carriers from acting outside it.[83] As we have discussed above, AT&T's tariff did not prohibit the movement of traffic without CSTP II plans. Assuming that AT&T reasonably suspected "fraudulent use" under section 2.2.4, the remedy under its tariff for the type of fraud it claims it suspected was suspension of service, not refusal to move the traffic. Accordingly, when AT&T availed itself of a remedy not "specified" in its tariff, that action was unauthorized. We grant petitioners' request for declaratory relief that AT&T had no legal basis to refuse to move the traffic from CCI to PSE.

D. Whether AT&T Violated Sections 201, 202, 203 of the Act and Rule 61.54

18. In their fourth and final request for declaratory relief, petitioners ask the Commission to find that "AT&T's refusal to accept such transfer of traffic . . . was, therefore, in violation of AT&T's tariff, its obligations under Section 201, 202 and 203 of the Act and Rule 61.54 of the Commission's rules."[84] In its Opposition, AT&T argues that "disputed material issues of fact concerning Petitioners'

[76] Petition at 8; *see also supra* n.44.

[77] 47 U.S.C. § 203.

[78] 47 U.S.C. § 203(a).

[79] *See, e.g., Brown v. MCI WorldCom Network Services, Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002); *AT&T v. City of New York*, 83 F.3d 549, 552 (2nd Cir. 1996)(citing 47 U.S.C. § 203(a)).

[80] 47 U.S.C. § 203(b)(1).

[81] 47 U.S.C. § 204.

[82] *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939) (cited in *Brown*, 277 F.3d at 1170; *ICOM Holding Inc. v. MCI WorldCom*, 238 F.3d 219, 221 (2nd Cir. 2001)).

[83] *See AT&T v. Central Office Telephone*, 524 U.S. 214, 222-23 (1998); *MCI WorldCom v. FCC*, 209 F.3d 760, 762 (D.C. Cir. 2000). The "filed tariff doctrine" has been applied frequently to preclude customers from enforcing alleged carrier promises that are not specified in the tariff. *See, e.g., Central Office Telephone*, 524 U.S. 214; *ICOM*, 238 F.3d at 221-23; *Marco Supply Co. v. AT&T Communications, Inc.*, 875 F.2d 434, 436 (4th Cir. 1989).

[84] Petition at 8.

intent to defraud AT&T are at the heart of all four legal issues which CCI is asking the Commission to resolve, and thus preclude a declaratory ruling."[85] Thus, it reasons, if petitioners wish to proceed before the Commission, they are required to do so through a formal complaint with a complete evidentiary record.[86] We agree that declaratory relief is inappropriate for some of the issues raised by petitioners.[87] We disagree, however, with AT&T's contention that *all* of the issues upon which petitioners seek declaratory relief – or the court's primary jurisdiction referral[88] – involve disputed material issues of fact.[89] The language of the tariff is undisputed. It is undisputed that petitioners requested that A&T move end-user traffic from CCI to PSE and it is undisputed that AT&T did not effect that move. These undisputed facts form the basis for our grants of declaratory relief.

19. Within this framework, we consider petitioners' remaining requests for relief. We go no further than petitioners' claim under section 203, because we find it dispositive. Petitioners argue that, under the circumstances of this case, AT&T's refusal to move the end-user traffic from CCI to PSE violated section 203 of the Act.[90] Subsection 203(c) forbids a carrier from employing or enforcing any classifications, regulations, or practices affecting its charges unless they are "specified" in the tariff and makes it unlawful for a carrier to deviate, in the rendition of tariffed services, from the charges, regulations, and practices set out in its filed tariff.[91] We agree that, when AT&T availed itself of a remedy not "specified" under its tariff, it violated section 203 of the Act.[92] As discussed in Section C above, pursuant to section 203, a carrier's tariff controls the rights and obligations of the carrier, which, as

[85] Opposition at 14; *see also* AT&T Further Reply at 7.

[86] *See* Opposition at 14, 19.

[87] For example, petitioners claim that AT&T engaged in unlawful discrimination in violation of section 202 because its consistent practice was to permit aggregators to transfer locations without plans. *See* Petition at 23, 25. Petitioners also argue that AT&T engaged in an unreasonable practice in violation of section 201 because, when it refused to effect the transfer of locations, it enforced an unwritten rule. *See* Petition at 22-23. Petitioners filed voluminous documents with the Commission, many of which also were filed with the district court, which petitioners claim support their theory of the case. AT&T has not attempted to rebut these individual claims, asserting, instead, that the facts regarding these claims are disputed and arguing that declaratory relief is not appropriate when all relevant facts are not clearly developed before the Commission and essentially undisputed. *See Cascade Utilities, Inc., American Telephone and Telegraph Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 8 FCC Rcd 781, 782 para. 11 (CCB 1993) (cited in Opposition at 10 (additional citations omitted)). As noted above, we agree that declaratory relief is inappropriate when the facts are disputed. Accordingly, we deny all requests not specifically granted. In accordance with the discretion allowed us in a declaratory proceeding, moreover, we see no need to attempt to resolve the disputed issues through a formal complaint proceeding before the Commission, as AT&T proposes. Given our conclusion that AT&T violated section 203 of the Act, it is unclear what additional fact-finding on these issues is necessary. Assuming that further inquiry is appropriate, efficiency favors their resolution in the district court where the evidentiary record already has been developed. That is consistent with petitioners' original choice of forum for this dispute, with petitioner's objective in this proceeding, *see* Reply at i ("Any factual issues which need to be addressed in order to apply the tariff, after the tariff is interpreted by the Commission, can be addressed by the District Court, which has already compiled an extensive factual record in this case"), 14, and with the court's primary jurisdiction referral. The district court proceeding is still pending and the parties have presented evidence in that forum, *inter alia*, in the course of a two-day hearing.

[88] *See* Opposition at 9.

[89] *See* Opposition at 14.

[90] Petition at 22-23, 25-26. Specifically, petitioners argue that AT&T failed to follow its tariff, that it applied and enforced non-tariffed regulations and conditions, and that it failed to tariff the regulations and conditions that it followed. Petitioners argue that this conduct also violates Rule 61.54(j).

[91] 47 U.S.C. § 203(c); *see Central Office Telephone*, 524 U.S. 214.

[92] 47 U.S.C. § 203(c).

a matter of law, is required to abide by the tariffed terms and is precluded from acting outside it.[93] AT&T's tariff did not prohibit the movement of traffic without plans. Thus, when AT&T availed itself of a remedy not "specified" in its tariff, that action violated subsection 203(c). Accordingly, we grant petitioner's request for declaratory ruling that AT&T violated section 203.

20. We do not reach petitioners' remaining claims under sections 201, 202, and Commission Rule 61.54(j) in light of our conclusion that AT&T violated section 203 of the Act.[94] As discussed above, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[95] In this case, petitioners' requests for declaratory relief arose out of a primary jurisdiction referral, which asked the Commission to interpret a provision of AT&T's tariff. Our interpretation of the tariff coupled with the undisputed facts lead us to conclude that AT&T engaged in conduct unauthorized by its tariff and, accordingly, violated subsection 203(c) of the Act.

IV. CONCLUSION

21. In sum, we conclude that AT&T's tariff did not preclude the movement of end-user traffic from CCI to PSE without the accompanying CSTP II plans. We also conclude that AT&T did not avail itself of the remedy specified in its tariff for suspected fraud and thus cannot rely upon the fraud sections of its tariff to justify its refusal to move the traffic. Accordingly, we conclude that AT&T's action in refusing to move the traffic was unlawful and violated subsection 203(c) of the Communications Act.

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[93] *See* nn.77-83, *supra*, and accompanying text.

[94] *See also* n.87, *supra*. We also decline to address issues concerning AT&T's shortfall charges in this declaratory proceeding. In the Joint Motion for Expedited Consideration, which was filed on July 15, 1996, petitioners argued that AT&T unlawfully billed shortfall charges to CCI's end users in June of 1996. *Joint Motion for Expedited Consideration of the Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2,* Internal File No. CCB/CPD 96-20, Public Notice, 11 FCC Rcd 8738 (1996); *see also* Joint Motion for Expedited Consideration at 2 (citations omitted). After receiving AT&T's bills for shortfall charges, 190 of CCI's end users sent letters to the Commission in June and early July of 1996. The Consumer Protection Branch of the Enforcement Division of the Common Carrier Bureau informed these end users that their letters would be treated as informal comments in this declaratory ruling proceeding. After the original billing, however, in a letter dated June 27, 1996, AT&T informed CCI's end-users that the shortfall charges would be "transferred to a bill directed to CCI itself." AT&T filed a copy of this letter with the Commission in a section 208 formal complaint proceeding that it filed against petitioner Winback & Conserve in October 1996. *See* Complaint, Exhibit A, Attachment E, *AT&T Corp. v. Winback and Conserve Program, Inc.*, E-97-02 (filed Oct. 25, 1996). Accordingly, we surmise that AT&T made no further attempt to bill or collect these charges from CCI's end-users and therefore conclude that the propriety of imposing shortfall charges on CCI's end-users is a moot issue. *See id.*; *see also AT&T Corp. v. Winback and Conserve Program, Inc.*, 16 FCC Rcd at 16076-77, para. 8. With respect to petitioners' argument that AT&T's CSTP II shortfall charges set forth in Tariff No. 2 are facially unreasonable, we find this issue – which was not referred to us by the district court – to be irrelevant to our conclusion that AT&T violated its tariff. *See* Section B, *supra*; *see also* n.50, *supra*. Finally, we refuse the parties' request that we declare whether "pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." *See* Joint Motion for Expedited Consideration at 2; Opposition at 14-15; Reply at 25. Declaratory relief on this issue – which also was not referred to us by the district court – is inappropriate because whether CCI's plans were pre- or post-June 17, 1994 plans is a disputed fact. *Compare id. with* Opposition at 14 n.13.

[95] 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j).

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201, 202, and 203 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 201, 202, 203, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Joint Petition for Declaratory Ruling of Combined Companies, Inc. and Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. IS GRANTED to the extent set forth herein, and is otherwise DENIED.

23. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 201, 202, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Joint Motion for Expedited Consideration of the Joint Petition for Declaratory Ruling IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2	)	
	)	
On Referral by the United States Court of Appeals for the Third Circuit	)	WC Docket No. 06-210
	)	Internal File No. CCB/CPD 96-20
Combined Companies, Inc. and Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc.,	)	
	)	
Petitioners,	)	
	)	
and	)	
	)	
AT&T Corp.,	)	
	)	
Respondent.	)	

ORDER EXTENDING PLEADING CYCLE

Adopted: January 12, 2007 **Released: January 12, 2007**

Revised Filing Dates:

Reply Comments Due: January 31, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc., and Winback & Conserve Program, Inc. (the Inga Companies) filed a Motion for Extension of Time requesting that the Commission extend the period for all interested parties to file reply comments in the above-captioned proceeding from January 17, 2007, to February 16, 2007 at the earliest.[1] The Inga Companies state that this extension is necessary in order to permit the parties to seek and obtain additional guidance from the

[1] *See Comment Sought on Request for Declaratory Rulings, Pleading Cycle Established,* DA 06-2360, Public Notice (rel. Nov. 22, 2006).

district court as to the issues currently on primary jurisdiction referral to the FCC.[2] AT&T opposes the request, asserting that the question referred to the FCC by the district court is clear and does not need further clarification; thus no extension of time is necessary.[3]

2. It is the policy of the Commission that extensions of time shall not be routinely granted.[4] In light of that policy, and given the limited scope of this proceeding, we will not grant an extension to await additional guidance from the district court. The Inga Companies' Request for Declaratory Rulings arises out of a primary jurisdiction referral made by the United States District Court for the District of New Jersey.[5] The Inga Companies are plaintiffs in that court proceeding, which was stayed pending the FCC's resolution of the issue referred on primary jurisdiction. Specifically, the Commission was asked to determine "'whether section 2.1.8 [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.'"[6] In its *Order on Primary Jurisdiction Referral*, the FCC initially concluded that section 2.1.8 did not apply to transfers of traffic alone.[7] The United States Court of Appeals for the District of Columbia Circuit, however, found that conclusion to be incorrect. That court declined itself to further interpret section 2.1.8.[8] Following the D.C. Circuit's order, the Inga Companies moved to lift the stay in the district court proceeding, but that court found that the primary jurisdiction issue was still open. Accordingly, the district court directed the Inga Companies to "initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of [AT&T's] Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion."[9] Thus, the district court's June 2006 order asks us to revisit the issue previously presented.

3. As discussed in the 2003 *Order on Primary Jurisdiction Referral*, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[10] When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act.[11] That is our goal here. The district →

[2] *See* Request for Extension of Time to File Reply Comments at para. 11 (filed Dec. 29, 2006).

[3] *See* AT&T's Reply to Petitioners' Request for Extension of Time to File Reply Comments at 1, 4 (filed Jan. 5, 2007).

[4] 47 C.F.R. § 1.46(a).

[5] *Combined Companies, Inc. v. AT&T Corp.*, Civil Action No. 95-908, slip op. (D.N.J. filed May 19, 1995).

[6] *Combined Co., Inc. v. AT&T Corp.*, No. 96-5185, slip op. at 3 (3d Cir. filed May 31, 1996) (quoting *Combined Companies, Inc. v. AT&T Corp.*, Civil Action No. 95-908, slip op. at 15).

[7] *Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2 On Referral by the United States Court of Appeals for the Third Circuit*, Internal File No. CCB/CPD 96-20, Memorandum Opinion and Order, 18 FCC Rcd 21813 (2003) (*Order on Primary Jurisdiction Referral*), *pet. for review granted, AT&T Corp. v. FCC*, 394 F.3d 933 (D.C. Cir. 2005).

[8] *AT&T Corp. v. FCC*, 394 F.3d at 939.

[9] *Combined Companies, Inc v. AT&T Corp.*, No. 95-908 (WGB), Order at 2 (D.N.J. filed June 1, 2006).

[10] *Order on Primary Jurisdiction Referral*, 18 FCC Rcd at 21823, para. 15 (quoting 5 U.S.C. § 554(e); and citing 47 C.F.R. § 1.2; 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973)); *see also* 47 C.F.R. § 1.1 (the Commission will follow procedures which, in its opinion, best serve the purposes of the proceedings).

[11] *Order on Primary Jurisdiction Referral*, 18 FCC Rcd at 21823, para. 15; *see also Petition of Home Owners Long Distance, Inc. for a Declaratory Ruling that WorldCom Cannot Limit its Liability for Gross Negligence or Other Willful Misconduct Through its Interstate Tariffs*, 14 FCC Rcd 17139, 17145, para. 12 (Enforce. Bur. 1999).

court's June 2006 order does not expand the scope of the issue previously presented.[12] Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No. 2, a matter already extensively briefed by the parties.[13] Accordingly, we will not extend the reply comment period in this proceeding to await further direction from the district court. We grant a brief extension to the parties to file reply comments, which should be informed by this reminder as to the scope of the matter presented here. Specifically, we extend the deadline for filing reply comments until January 31, 2007.[14]

4. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and sections 0.91, 0.291, 1.1, 1.2 and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.1, 1.2, 1.46, the pleading cycle established in this matter shall be modified as follows:

Reply Comments Due: January 31, 2007

5. IT IS FURTHER ORDERED that the Motion for Extension of Time of One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. and Winback & Conserve Program, Inc. is GRANTED in part and DENIED in part, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

[12] Moreover, in the *Order on Primary Jurisdiction Referral*, the Commission declined to rule on factual disputes between the parties, finding resolution of such facts was unnecessary on the primary jurisdiction referral, which requested an interpretation of section 2.1.8. *Id.*, 18 FCC Rcd at 21825, para. 18 & n.87. The Commission concluded that any disputed facts should be addressed by the district court, which -- as petitioners themselves previously argued -- was the original forum before which an evidentiary record had been compiled. *Id.* at n.87. These decisions were not disturbed by the Court of Appeals.

[13] *E.g.*, Request for Declaratory Rulings (filed Sept. 27, 2006); Comments of AT&T in Opposition to Request for Declaratory Rulings (filed Dec. 20, 2006); Joint Petition for Declaratory Ruling, Internal File No. CCB/CPD 96-20 (filed July 15, 1996); Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration, Internal File No. CCB/CPD 96-20 (filed Aug. 26, 1996); Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., Internal File No. CCB/CPD 96-20 (filed Apr. 2, 2003); AT&T Corp. Further Comments, Internal File No. CCB/CPD 96-20 (filed Apr. 2, 2003); Reply Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., Internal File No. CCB/CPD 96-20 (filed Apr. 15, 2003); AT&T Corp. Further Reply Comments, Internal File No. CCB/CPD 96-20 (filed Apr. 15, 2003); *see also* Letter from Alfonse G. Inga to Marlene Dortch, Secretary, FCC (filed Feb. 28, 2003); Letter from Alfonse G. Inga, President, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed Apr. 23, 2003); Letter from Aryeh Friedman, Senior Attorney, AT&T, to Judith Nitsche, Assistant Division Chief, Pricing Policy Division, FCC (filed Apr. 28, 2003); Letter from Alfonse G. Inga, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed May 5, 2003).

[14] We note that 800 Services, Inc., an entity not a party to the proceedings before the Commission, also filed a request for an extension of time to file additional comments. *See* Request for Extension of Time to File Reply Comments (filed Dec. 29, 2006). The extension until January 31, 2007 to file reply comments is granted to all commenters.

EXHIBIT C

2.2.4. Fraudulent Use (continued)

C. Using AT&T 800 Service or any other telephone number advertised or widely understood to be toll free, in a manner that would result in (1) the calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call; (2) the calling party being connected to a pay-per-call service; (3) the calling party being charged for information conveyed during the call; unless in either (1), (2) or (3) the calling party has a presubscription or comparable arrangement or discloses a credit or charge card number during the call; or (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services or products. The Customer must also comply with (a) Titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and (b) the regulations prescribed by the Federal Communications Commission and the Federal Trade Commission pursuant to those Titles.

D. Acquiring or reserving an 800 number provided by AT&T for the primary purpose of selling, brokering, bartering or releasing it for a fee or other consideration.

2.2.4. Fraudulent Use - The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:

A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:

1. Rearranging, tampering with, or making connections not authorized by this tariff to any service components, or

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices, whether directed at the Company or others.

B. Using WATS in response to an incomplete CTS or LDMTS call, which was not completed in order to circumvent the payment of applicable CTS or LDMTS charges.

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis.

D. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.

PLAINTIFFS NOTE: Section 2.2.4 is **not tied to 2.1.8.** The FCC did not need to interpret 2.1.8 obligations as AT&T would not have been able to assert a 2.2.4 fraudulent use defense unless it conceded CCI's customer plan obligations did not transfer. The issue was whether substantial traffic only could be transferred under 2.1.8 without the plan considering AT&T's 2.2.4 defense. Obligation Allocation was conceded by AT&T. This is why the FCC's 2007 Order is pointing the Court to the record regarding obligations. If AT&T believed that "all obligations" transferred in 1995 its defense would have been that plaintiffs were violating 2.1.8. However AT&T understood plaintiffs were adhering to 2.1.8 and AT&T created a bogus defense that plaintiffs were violating 2.2.4 when in fact the revenue commitments were already met and the plans were pre June 17th 1994 grandfathered.

EXHIBIT D

indefinite denial by AT&T to recognize the subject transfer is causing -- and shall continue to cause -- them irreparable harm. Their losses are clearly unquantifiable and may well lead to their business demise.

Thirdly, AT&T has little or no danger of being harmed should the sought-for relief be granted. Its economic risk, if any, would arguably be covered by an anticipated excess over commitment under Contract No. 516,[7] and/or by its increase in revenue by dint of acquiring plaintiffs' customers as they are siphoned into Contract No. 516 by alternative avenues. Indeed, the Court notes that the services provided by AT&T are billed directly to the end user who in turn remits payment directly to AT&T. The instant injunction does not change that, nor does it increase the risk that the end user shall not pay. Other interested parties -- among them, end users themselves -- face no threat of harm should the relief sought be granted.[8]

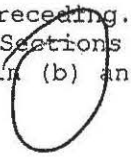
---

[7] As previously referenced, AT&T's counsel represented that AT&T has initiated suit against PSE for shortfalls. In analyzing the instant motion, however, and in light of the fact that that suit was for the first time referenced orally at the hearing on this motion, the Court is not deterred by such litigation. Indeed, AT&T's own counsel focussed the issue by indicating that the tariffed obligations involved herein "are all tariffed obligations, for which CCI, not PSE . . . would be obligated. See AT&T's Brief, filed with the Clerk of the Court on November 28, 1995, page 5. Therefore, it would appear that AT&T itself has acknowledged the irrelevance of its unrelated litigation against PSE.

[8] Apparently, per plaintiffs' representations, the likely threat of harm from recognizing another transfer -- identical to the transfer at issue herein -- was embraced by AT&T. See footnote 6, supra.

EXHIBIT E

1. CSTP II Exception - A Customer of a CSTP II that was either ordered on or prior to August 29, 1996, or in service on or prior to September 1, 1996, may discontinue without liability that Old Plan in conjunction with an order for a New Plan, subject to the conditions specified in (a), following, in lieu of the conditions specified in Sections 2.5.18.D. and E., preceding. The Customer also must satisfy the conditions specified in Sections 2.5.18.A. through C., preceding, except as otherwise provided in (b) and (c), following. C C C C C



Effective date of material filed under Transmittal No. 9229 is advanced to August 29, 1996 under authority of Special Permission No. 96-0677.
Certain material previously found on this page can now be found on Page 34.9.1.

** All material on this page is reissued except as otherwise noted. **

2.5.18.F.1. CSTP II Exception - (continued) N

(a) The total revenue commitment over the full term of the New Plan must be greater than or equal to the remaining annual revenue commitment of the Old Plan. The remaining annual revenue commitment of the Old Plan is the Annual Revenue Commitment divided by 12 times the number of full months remaining in the term of the Old Plan. If the New Plan is a Contract Tariff, only the 800 Service revenue commitments under the Contract Tariff are used to calculate the total revenue commitment of the New Plan. If more than one plan is being discontinued, the total revenue commitment over the full term of the New Plan must be equal to or greater than the sum of the remaining monthly revenue commitments (the monthly revenue commitment times the number of monthly remaining) and/or annual revenue commitments (the annual revenue commitment divided by 12, times the number of full months remaining) of the plans being discontinued. M C M M M M C . . C .

(b) Section 2.5.18.C. does not apply to a CSTP II that was in effect or on order on or prior to June 17, 1994. C C

(c) If the Customer has paid a Shortfall Charge pursuant to Section 2.5.18.C. in conjunction with its discontinuance of a CSTP II and replacement of the CSTP II with a New Plan, and if, at the end of the first year of the term of the New Plan, the Customer has incurred charges in excess of the New Plan minimum revenue commitment for that year, AT&T will provide a "credit" to the Customer for the amount by which such incurred charges under the New Plan exceeded such N . . N

EXHIBIT F

First letter from AT&T after the JAN 13th 1995 ORDERS

PITNEY, HARDIN, KIPP & SZUCH

P. O. BOX 1945
MORRISTOWN, NEW JERSEY 07962-1945

200 CAMPUS DRIVE
FLORHAM PARK, NEW JERSEY 07932-0950

FLORHAM PARK (201) 966-6300
NEW YORK (212) 826-0331

FREDERICK L. WHITMER

DIRECT DIAL NUMBER
(201) 966-6040

February 6, 1995

VIA TELECOPIER FACSIMILE
AND REGULAR MAIL

H. Curtis Meanor, Esq.
Podvey, Sachs, Meanor, Catenacci,
Hildner & Cocoziello
One Riverfront Plaza
Newark, NJ 07102-5497

Re: Alfonse G. Inga

Dear Mr. Meanor:

Two matters respecting your client, Alfonse Inga, require immediate attention. The first relates to Mr. Inga's widespread and frequent phone calls to various AT&T personnel with the intention of asking questions and audiotaping their answers. It is clear to AT&T that Mr. Inga's questions are intended to set up position-paper letters that he writes AT&T and are not intended to be genuine questions that he has concerning his business. We regard Mr. Inga's conduct as improper and merely an attempt at subterfuge for discovery. You should tell Mr. Inga to discontinue this practice immediately; otherwise we will have to take up this matter with the Court.

The second matter is of equally serious concern. We have reason to believe that Mr. Inga is attempting to transfer end users from existing plans that have over $50 million on commitments. Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, but without the ability to satisfy those commitments, appears to us to be an attempt to defraud AT&T by obtaining the benefits of a transfer of service and at the same time deprive AT&T of the commitments made to obtain that service. AT&T will not tolerate that conduct. AT&T will seek to enforce its rights in the event shortfall and termination charges become due under the tariff and will hold Mr. Inga personally liable for his

S&T STAY WITH CSTP II PLAN

conduct intended to deprive AT&T of its tariff charges. If this strategy is intended by Mr. Inga to culminate in the bankruptcy of his affiliated companies, AT&T intends to object to these transfers as fraudulent under §523(a)(2) of the Bankruptcy Code and to pursue any available rights AT&T has.

Please bring these matters to your client's attention immediately and advise me of his response.

Very truly yours,

FREDERICK L. WHITMER

FLW/erc

cc: Edward R. Barillari, Esq.

AT&T Brief to D.C. Circuit

Transfer of Service Agreement and Notification forms, Exhibit H to Petition for Declaratory Ruling (JA ___). At the bottom of each of these transfer of service forms, a handwritten notation requested that AT&T move the "traffic only" on each plan from CCI to PSE and keep the plan itself, including all associated commitments and liabilities, with CCI. *Id.* CCI and PSE thereby sought to move all of the revenue producing telephone numbers in the nine CSTP II plans to PSE, but leave all of the obligations arising under those plans with CCI.

AT&T denied this second proposed transfer to PSE on January 27, 1995. AT&T objected to this requested transfer of telephone numbers to PSE without the associated CSTP II plans on two grounds.[8] First, the "Transfer or Assignment" provision in Section 2.1.8 of AT&T's tariff did not allow the transfer of WATS service to a new customer unless the new customer agreed to assume "all obligations" of the former customer, which PSE had not done. *See Declaratory Ruling* at n.26. Second, AT&T objected that the proposed "traffic only" transfer violated the "Fraudulent Use" provision in Section 2.2.4 of the tariff. In particular, because CCI would have transferred all the revenue producing telephone numbers to PSE without any of the accompanying obligations of the customer under the CSTP II plans, and because CCI would have had no revenue or other means of meeting its obligations under those plans, the proposed transfer had the purpose and effect of avoiding, in whole or in part, liability for tariffed shortfall and/or early termination charges under the plans. *Id.*

4. The Proceedings Below. In February 1995, the Inga Companies and CCI brought suit against AT&T in the United States District Court for the District of New Jersey and challenged AT&T's refusal to effect either of the proposed transfers. *See Declaratory Ruling* ¶

"after that date, [Winback & Conserve] ceased to provide interstate communications services").

[8] AT&T also initially objected to this transfer on the ground that CCI was not the customer of record for the plans, and hence was not authorized to transfer the traffic. *Declaratory Ruling* ¶ 4. That objection was mooted when the plans were transferred from the Inga Companies to CCI.

2.1.8. Transfer or Assignment - WATS, including **any** associated telephone numbers, may be transferred or assigned to a New Customer, subject to each of the following provisions: Sx ..

C. The service is not interrupted at the time the transfer or assignment is made. Sx Sx

D. The Current Customer will no longer be AT&T's Customer for **the service** as of the Effective Date of the transfer, which will be the earlier of the date on which AT&T provides to the New Customer a written acceptance of the transfer or assignment, or the fifteenth day after AT&T receives a fully executed original of the Transfer of Service form, except: Sx Sx Cy .. Cy

1. The transfer will not be effective if, within fifteen days after AT&T receives a fully executed original of the Transfer of Service form, **AT&T provides to the New Customer a written rejection** of the requested transfer. AT&T may not unreasonably reject a transfer or assignment of service. AT&T may, for example, reject a transfer or assignment of service if the Current Customer or New Customer fails to supply the executed original(s) of the Transfer of Service form, fails to adequately identify the Current Customer or the service being transferred, asks that the transfer or assignment be made subject to conditions, or fails to furnish a **deposit required in connection with the intended transfer pursuant to Section 2.5.8, following**. **AT&T will provide a written statement of its reason(s) for rejecting a transfer or assignment of service.** **Ny** .. .. Ny

Cy

* The requirement that the transfer or assignment be made using the standard AT&T Transfer of Service form shall apply to transfer or assignment requests made on or after July 1, 1996.
Certain material previously found on this page can now be found on Page 20.1.

x **Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.**

y **Issued on not less than one day's notice under authority of Special Permission No. 96-0468.**

If AT&T does not deny the 2.1.8 transaction within 15 DAYS the transaction must be processed.

All AT&T Defenses are thus Barred
AT&T failed the 15 day statute of limitations in 2.1.8

READ FROM BOTTOM UP

From: Al [mailto:ajdmm@optonline.net]
Sent: Tuesday, March 31, 2015 2:28 PM
To: Brown, Richard
Cc: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov; Frank Arleo (Frank.Arleo@arleodonohue.com); 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com)
Subject: RE: Richard -- Please provide this information...

Richard

I have received confirmation of your receipt of my email. We will just assume you have no such Jan 27th 1995 denial of the CCI-PSE traffic only transfer under 2.1.8 as your brief to the DC Circuit stated.

Enjoy the holiday.

Thank you
Al

From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Monday, March 30, 2015 6:32 PM
To: ajdmm@optonline.net
Subject: Read: Richard -- Please provide this information...

Your message

To: Brown, Richard H.
Subject: Richard -- Please provide this information...
Sent: Monday, March 30, 2015 6:31:21 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Monday, March 30, 2015 6:31:32 PM (UTC-05:00) Eastern Time (US & Canada).

notify the sender by immediate reply and delete the original message. Thank you.
****
****

From: Al [mailto:ajdmm@optonline.net]
Sent: Monday, March 30, 2015 6:31 PM
To: Brown, Richard
Cc: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov
Subject: Richard -- Please provide this information...

Richard

AT&T claimed to the DC Circuit that it denied the CCI-PSE order of Jan 13th 1995 on Jan 27th 1995 in order to comply with the 15 day statute of limitations clause within tariff section 2.1.8.

It appears AT&T simply fabricated that Jan 27th 1995 date. I have a letter from AT&T Counsel Fred Whitmer dated 2.6.95 that is only a fraudulent use warning letter. Obviously AT&T did not first deny the transaction and then a week later only issued a warning letter! The 2.6.95 letter is clearly the first correspondence received from AT&T after the transaction.

Plaintiffs understand that AT&T will not be opposing writ of mandamus with the DC Circuit. I do want to give AT&T the opportunity to address why it intentionally scammed the DC Circuit on this case concluding critical issue?

Please send me the denial document.

Thank you
Al Inga

Transcribed by Rizman, Rappaport, Dillon, & Rose
Certified Court Reporters
Tape 7 at 6-7:

Joe Fitzpatrick: If you get a new VPP number, you get a new plan. If you keep the same VPP number only with a new start date, **it's not a new plan.** So if they should give you a new plan VPP number....
Mr. Inga: Yeah
Joe Fitzpatrick You were given a new plan.
Mr. Inga: Alright but say the VPP stays the same.
Joe Fitzpatrick: Stays the same, all you have then is a new TASD –Term Assumption Starting Date, you have and original plan whatever TAS you wanna call that an ABC plan or whatever but its, its just a new TAS date. If you were grandfathered, you know how that game is played.
Mr. Inga: Now what I am saying is this, theoretically, there can never be a penalty assessed on a restructured plan because that plan—because AT&T has already interpreted that a restructure is not a new plan, that TAS date will start but the VPP ID, VPP dictates whether it's a new plan or not.
Joe Fitzpatrick: If you kept the same VPP number---
Mr.Inga Yes.
Joe Fitzpatrick: The plan that you started prior, you know in June of '94, prior to 6/17 **as long as that VPP number doesn't change**, they can track back in the system and say that was a –they can show when it was originally started, it was a pre 6/17 plan, it's **grandfathered.** True, you may get new TAS dates every time you restructure and as long as you do the restructure---if you time it right, if you screw up somehow and don't time it right, that system is gonna kick in and hit you for shortfall. So you just need to, you know, keep your clock there to tell you when to restructure.

AT&T Manager Confirmed that Pre 6/17/94 Plans will always remain GRANDFATHERED Immune from Shortfall and termination charges.

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 95-427
Washington, D.C. 20554

In the Matter of	)
	)
Motion of AT&T Corp. to be	)
Reclassified as a Non-Dominant Carrier	)

ORDER

Adopted: October 12, 1995 Released: October 23, 1995

By the Commission: Commissioners Barrett, Ness and Chong issuing separate statements.

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement:

As a general practice, AT&T grandfathers both existing customers and subscribed customers (i.e., customers who have submitted a signed order for service) when it introduces a change to a term plan (including Contract Tariffs, term plans under Tariffs 1, 2, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and it commits to continue that process. In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates (post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, **AT&T commits for a twelve-month period to offer its customers the following additional protections not required of non-dominant carriers**:

- where AT&T makes any change to an existing term plan, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, however, that for **changes to discontinuance with or without liability**, deposits and advance payments, **or transfer or assignment of service**, AT&T will file on 14-days' notice. (AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. **Where the affected customer objects to the change**, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days notice filings, **the substantial cause test will be applicable to the same extent as it is today.**

Found Online At:
http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt

Sept 20th, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov
FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210
CCB/CPD 96-20

Dear FCC Staff:

AT&T on page 9 of its initial brief to the DC Circuit in 2004 stated the following:

> **AT&T denied this second proposed transfer to PSE on January 27, 1995.**

The above statement that AT&T made is not only a blatant lie but actually serves to show that AT&T understood section 2.1.8's 15 day statute of limitations provision at 2.1.8(c). AT&T obviously did not provide any evidence to the DC Circuit of such a denial, which surely would have had to be made by letter to either petitioner's President Mr Inga, CCI's president Mr .Shipp or PSE's president Mr Scardino. PSE was a co-plaintiff party along with petitioners and CCI before Judge Politan in 1995 before dropping out because its interests were being pursued by the remaining two plaintiffs. No notification was sent to any of the parties.

The date of the "traffic only" transfer was Jan 13th 1995 as indicated on the TSA's at exhibit F of petitioners 9/27/06 FCC comments.

AT&T simply made up a date that was within 15 days of Jan 13th 1995 so AT&T stated it "denied this second proposed transfer to PSE on Jan, 27th, 1995".

The actual first contact by AT&T concerning the "traffic only" transfer was made by AT&T on February 6th 1995 to petitioners then counsel Mr. Curtis Meanor. The FCC can see a copy of this letter exhibited as X within petitioners 9/27/06 FCC filing. The relevant excerpts are here:

> Dear Mr Meanor:
>
> Two matters respecting your client, Alfonse Inga, require immediate attention. The first…
>
> (OMMITED HERE AS NOT RELEVANT)
>
> …..The second matter is of equally serious concern. We have reason to believe that Mr. Inga is attempting to transfer end users from existing plans that have over $50 million on commitments. Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, but without the ability to satisfy those commitments, appears to us to be an attempt to defraud AT&T by obtaining the benefits of a transfer of service and at the same time deprive AT&T of the commitments made to obtain that service. AT&T will seek to enforce its rights in the event shortfall and termination charges become due under the tariff and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its tariff charges. If this strategy is intended by Mr Inga to culminate in the bankruptcy of his affiliated companies, AT&T intends to object to these transfers as fraudulent under section523 (a) (2) of the Bankruptcy Code and to pursue any available rights AT&T has.
>
> Please bring these matters to your client's attention immediately and advise me of his response.

Very truly yours,

Frederick L Whitmer

CC: Edward R. Barillari, Esq.

Notice these statements in the Whitmer letter:

"Two matters respecting your client, Alfonse Inga, require immediate attention"

"is attempting"

"AT&T "intends" to object to these transfers"

Please bring these matters to your client's attention immediately and advise me of his response.

Obviously these AT&T statements -------of its head outside counsel Mr Whitmer and copied to its head inside counsel Mr Barrillari----- which were made 2/6/95 was after AT&T's alleged 1/27/05 denial. These statements would have never been made had a denial already been issued.

Obviously this February 6th 2007 letter was the first contact by AT&T regarding the "traffic only" transfer. Obviously there was no previous Jan 27th 1995 denial. After 11 years AT&T simply asserted for the first time ever that it denied the "traffic only" transfer within 15 days.

In fact this February 6th 1995 letter was not even a denial of the "traffic only" transfer. Mr. Whitmer's letter was simply a warning –not a denial—and was baseless given the fact that the CSTPII/RVPP plans commitment had already been met and the plans were pre June 17th 1994 immune from shortfall and termination charges. These were things that Mr Whitmer should have knows at the time of his February 6th 1995 letter and at the time of the Jan 13th 1995 "traffic only transfer". He did not know at that time that there was a contractual arrangement to get the traffic back, but given the first two facts his warning was still not justified.

Petitioners brought up the 15 day statute of limitation within its 9/27/06 filing page 19 para 58:

> The date of the initial warning letter is 2/6/05 and the TSA's were counter signed 1/13/05; thus it is an undisputed fact that AT&T failed 2.1.8's 15 day statute of limitations.

Also see complete details of petitioners 15 day argument within petitioners 1/31/07 FCC Comments on page 146

XXX AT&T Failed the 15 day Statute of Limitations Evaluation Period Within Section 2.1.8.....page 146

The FCC should take a close look at the subsequent May 1996 version of 2.1.8 found at exhibit C in petitioners 1/31/07 filing in which it is explicit that 15 days is a hard statute of limitations date

The question the FCC has to ask is why didn't AT&T respond in its Dec 20th 2006 FCC comments nor Jan 31st 2007 FCC comments that AT&T had denied the "traffic

only" transfer within 15 days? AT&T simply argued to the FCC in 2006 and 2007 that the 15 days was not a statute of limitations date to deny the "traffic only" transfer.

Furthermore if the FCC looks at the First District Court Decision of May 1995 (exhibited within petitioners 1/31//07 filing) AT&T never refuted that it blew section 2.1.8's statute of limitations date of 15 days. Imagine if AT&T had actually denied the "traffic only" transfer within 15 days that AT&T simply forgot to tell the Judge Politan!!!

The reason why AT&T did not bogusly argue to the FCC in Dec 2006 & Jan 2007 that it did deny the "traffic only" transfer within 15 days (but show no evidence of it) is

1) the FCC would realize that AT&T clearly understood that under section 2.1.8(c) the 15 days is a hard statute of limitations date and

2) the AT&T February 6th 1995 letter had already been submitted as evidence by petitioners in its opening filing on 9/27/06. AT&T knew that if the FCC staff read the February 6th 1995 letter and AT&T simultaneously asserted that it denied the "traffic only" transfer within 15 days, the Commission would surely recognize AT&T was again scamming the FCC. So AT&T simply conjured up another bogus excuse in its Dec 20th filing as to why the 15 days does not mean 15 days.

AT&T's egregious fabrication of a "denial date within 15 days" to the DC Circuit only serves to let the Commission know that AT&T clearly understood what the 15

days meant. The Commission should also re-read Mr Whitmer's February 6th, 1995 letter in relation to Mr Whitmer's clear message that S&T obligations stay with the plan on the "traffic only" transfer ordered.

The FCC must issue a ruling stating that AT&T violated its tariff by not adhering to section 2.1.8(c)'s statute of limitations date and all other issues are mute.

Respectfully Submitted
One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc

/s/ Al Inga
Al Inga President

EXHIBIT G

HUBERT A. STREEP
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CERTIFICATION

I, Hubert A. Streep, residing at 16 Hawthorne Drive, Medford, NJ 08055 state the following:

From March 1991 through January 2000, I worked for The Furst Group, Inc., a New Jersey Corporation with offices at 459 Oakshade Road, Shamong, NJ 08088. During this period, The Furst Group was an aggregator and reseller of AT&T telecommunications services, including outbound (1 plus) and inbound (toll free 800) services.

In my role as the Executive Vice President, I was responsible for all Legal and Regulatory Affairs of the company and the Tariff Filings (State PUC and Federal / FCC) of the services. I also executed, on behalf of the company, Transfer of Service (TSA) agreements for AT&T Tariff Plans such as CSTP, CSTP II, and Contract Tariff, Toll Free 800 Service Term Plans ("Term Plans"). Typically these Term Plans had both term and volume commitments.

During the period of time above, the movement of end user toll free service customers from one Term Plan to another was a common occurrence, sometimes done by the end user themselves or very often by the aggregator or AT&T Term Plan customer.

When toll free 800 customers were moved from one Term Plan to another Term Plan, the term or volume commitment did not move with the end user customer(s). All term and volume commitments stayed with the original Term Plans.

As an AT&T Term Plan customer, The Furst Group moved many end user 800 customers from one Term Plan to another without repercussion or penalty by AT&T and without a term or volume commitment moving from the original Term Plan to the new Term Plan. This was both an accepted practice and consistent with the AT&T filed tariffs at the time.

I certify that the above is true based upon my knowledge, information and belief.

Hubert A. Streep

February 12, 2015
Date

EXHIBIT H

I Robert Mocas Certify as Follows:

1) I have been involved in the telecommunications industry from 1992 through today. I was an AT&T 800 aggregator under the company names Sa-Com and Easton Telecom Services. I used the same AT&T discount plan CSTP/RVPP 28% as Mr Inga's Companies. I understood the tariffs exceptionally well and did telecom consulting prior.

2) I understand AT&T did not deny the traffic only transfer at issue within 15 days as per 2.1.8C. Therefore why is the FCC even being asked about obligations? There is no interpretation needed. That is a deadline that if AT&T does not deny the transaction it must be processed. It is in essence a statute of limitations date. In this case the CCI-PSE transaction complied with 2.1.8 however due to AT&T's failure to meet the 15 days the transaction would have need to been processed no matter how the AT&T customers wanted it so the FCC interpretation is completely unnecessary.

3) I understand that the New Jersey Court asked what obligations transfer when only accounts (aka locations, aka billed telephone numbers=BTN's) transfer and not the entire plan. AT&T provided aggregators with its Transfer of Service Agreement form (TSA). This form was completed for either a traffic only transfer or a plan transfer. On a traffic only transfer the new customer has to assume the bad debt and minimum payment period that are listed on the TSA for the accounts that are specified for transfer.

4) The new customer must assume all the obligations of the <u>former</u> customer and simply if accounts only are transferred and not the plan the transferor doesn't become a former customer of its plan and so the time and volume commitments stay with the non transferred plan.

5) Still to this day for traffic only transfers the time and volume commitments don't transfer and there will never be evidence produced showing anything differently as such evidence does not exists in the marketplace.

6) Shortfall and termination liabilities could be managed if the plans were pre June 17th 1994 ordered by timely restructuring the CSTP/RVPP plan. In tariff terms it is called a discontinuance without liability but the industry lingo it was called a restructure. Any AT&T customer could avoid shortfall and termination liabilities but it was forced to extend its time commitment to AT&T. As long as the aggregator had an RVPP ID that was ordered prior to June 17th 1994 the plans could be restructured forever, but AT&T intentionally misrepresented that a restructured plan was a new plan.

7) AT&T simultaneously interpreted that a restructure plan was both new and only restructured to benefit itself both ways. AT&T said it was **<u>new</u>** so aggregators would lose grandfathered status. However if the aggregator had a new plan it was able to enroll AT&T customers without penalties that were under commitments and AT&T, so AT&T said it was a restructured contract and not new! In the July 1997 AT&T/CCI settlement agreement AT&T claimed the shortfall charges were alleged shortfall and termination charges. However AT&T had already put many

aggregators out of business by applying its tariff interpretation which was opposite of what Judge Politan determined as the commitments being illusory. AT&T did whatever it wanted.

8) The Inga companies traffic transfer was no different than other traffic transfers. AT&T stopped it due to its size but under the tariff there was no maximum amount of accounts that could be transferred. As long as the lead accounts remained on the plan it was a traffic only transfer not a plan transfer.

9) These were the terms and conditions were under 2.1.8. If the FCC were to modify the terms and conditions it would be prospective and all transactions would be grandfathered anyway so it doesn't matter what the FCC says

I understand that I am subject to punishment if any of the content is willfully false.

Robert Mocas

Robert Mocas

Easton Telecom Service LLC

2.12.15

EXHIBIT I

I Robert Collett Certify as Follows:

1) I was involved in the telecommunications industry from October 1989 through April 2003. I was the owner of 800 Group Ohio an AT&T aggregator of toll free service using the same CSTP/RVPP 28% discount plans as the Inga Companies. I leveraged expertise of the AT&T tariffs to reduce clients' collective long distance telephone costs by more than $5 million annually. I ended up selling my business to Telsave that launched its business by having obtaining the same contract tariff CT-516 from AT&T that PSE obtained which provided 66% discount on toll free services.

2) I understand that there was question raised by Judge Bassler in the NJFDC regarding which obligations transfer when a traffic only transfer is ordered between AT&T customers as opposed to an entire plan transfer.

3) Under section 2.1.8 of AT&T's tariff the obligations allocation language says the new customer must assume all obligations of the **former** customer. Section 2.1.8 was implemented by using an AT&T Transfer of Service Agreement Form. Section 2.1.8 controlled the transfer of either an entire plan with all end user accounts or simply traffic only no plan. On traffic only transfers the new customer has to assume the bad debt and minimum payment period, only on the accounts transferred. Of course the new customer does not assume bad debt and minimum payment period on the end-user accounts not transferred to it—as the former customer is not a former customer on the end-user accounts it keeps.

4) So if 80% of the accounts were transferred from the former AT&T customer to the new AT&T customer the new AT&T customer obviously is not liable for bad debt on the 20% of the accounts not transferred to it. The new customer must assume all the obligations of the former customer and therefore that means all of the obligations on what service is former to the transferor—i.e. what is specified for transfer to make the transferor a former customer as to what is transferred.

5) Therefore on a traffic only transfer the Transferor keeps its plan and keeps its status as an AT&T Customer and obviously is NOT A FORMER AT&T CUSTOMER. As a remaining AT&T customer it must maintain its customer of record obligations of revenue and time commitments and thus would be responsible for potential liabilities of shortfall and termination penalties. On a traffic only transfer the customer plan obligations of revenue and time commitments and their absolutely do not transfer.

6) On a plan transfer the transferor gives up its AT&T plan and thus its status as an AT&T customer. The transferor on a plan transfer in effect becomes a former AT&T customer. Therefore the new customer on an entire plan transfer must assume all obligations of the former customer and that means the revenue and time commitments would transfer.

7) In the history of AT&T toll free service the new customer receiving only end-user traffic and not the plan would never be expected to assume the revenue and time commitments of the non

transferred plan. It will be impossible for AT&T to produce evidence of a section 2.1.8 traffic only transfer in which the former customer's revenue and time commitments transferred.

8) There was a point in which AT&T required security deposits applied against CSTP/RVPP plans when those plans transferred substantial traffic. The calculation to determine the security deposits to protect against shortfalls was based upon the plans revenue commitment compared to the traffic remaining after accounts were removed. If revenue and time commitments transferred away from the plan on a traffic only transfer it would not make sense to require the former customer to post security deposits on a commitment that was no longer there! So this is yet another reason why the Court can see that on a traffic only transfer the revenue and time commitments do not transfer.

9) The Court must also understand that shortfall and termination liabilities that result when revenue and time commitments are not met may never have been an issue of the former customer if the CSTP/RVPP plans were grandfathered when timely restructured. Under the grandfathered clause the aggregator could advise AT&T that it was willing to extend its time commitment to AT&T by restructuring its obligations before the year end date. The fiscal year end date of the CSTP/RVPP plan is when AT&T sees if the aggregator has met its revenue commitment. So if the aggregator wanted in the 11^{th} month to restructure its contract it never got to the 12^{th} month to calculate the shortfall and termination liabilities. The aggregator would be forced to extend its contract with AT&T for another 3 years but would never have shortfall and termination penalties assessed against it.

10) I understand that AT&T originally conceded that revenue and time commitments do not transfer on a traffic only transfer in order to allege that the Inga Companies would violate AT&T's fraudulent use provision if substantial traffic was transferred. If the plans were grandfathered the commitments were a red herring non-issue and a fraudulent use assertion makes absolutely no sense. As long as the aggregator had an RVPP ID that was ordered prior to the grandfathered date it could restructure its CSTP/RVPP plan for as many years as it wanted—those plans were gold and allowed the aggregator to move its traffic to get better rates like CT-516 and restructure the non transferred plan with its revenue and time commitments. If the plan was a new order and not a restructure then it had to meet pro-rata monthly commitments when restructured.

11) What the Inga Companies attempted to do and were denied was no different than what any other AT&T aggregator or AT&T customers were able to do. AT&T tried to stop the Inga Companies due to the quantity of accounts it tried to transfer. However under AT&T's 2.1.8 Transfer of Service provision it didn't make a difference if you were transferring 1 account or 99% of the accounts---either it was a traffic only transfer or a plan transfer--- the obligations language worked the same way--- revenue and time commitments don't transfer then and still don't today.

12) I hope this aids the Court in understanding what the terms and conditions were under 2.1.8 of AT&T's tariff at the time of the Inga Companies denied transaction. I don't understand why the Court is waiting for the FCC to determine whether customer plan obligations transfer for two reasons: A) it is obvious such obligations don't transfer B) even if the FCC were to decide that revenue and time commitments are to transfer on a traffic only transfer in the future that would be a change in the terms and conditions of 2.1.8. By law a change in the terms and conditions would be prospective and all traffic only transfers done prior to a future FCC decision would be grandfathered—so the FCC decision is moot. There is no reason why the transaction that was ordered should not have been processed by AT&T as it adhered to section 2.1.8 explicitly. Furthermore the transaction in question should not even be debatable since AT&T did not deny the transaction within 2.1.8C's statute of limitations deadline of 15 days.

Robert Collett

Robert Collett

EXHIBIT J

I Phillip Okin certify to the following:

My company 800 Services, Inc. has been a frequent public commenter in the Inga Companies case and also was an aggregator of AT&T toll free service for many years and was active in Jan 1995 when the Inga Companies had their traffic only transfer denied by AT&T.

1) I am very familiar with AT&T's section 2.1.8 and the AT&T issued Transfer of Service Agreement (TSA) Form that was a mimic of the AT&T transfer section. The AT&T (TSA) enabled two AT&T customers to transfer either the entire plan or end-user traffic only, not the plan.

2) AT&T did many of the traffic only transactions; especially when some aggregators were given Contract Tariffs (CT's) with deeper discounts, so many of the CSTP/RVPP owners transferred their traffic to the deeper discounts CT's.

3) AT&T's terms and conditions dictated that the former customer's CSTPII/RVPP obligations for revenue and time commitment and the associated liabilities on those obligations (shortfall and termination liabilities did not transfer to the new AT&T customer. The former AT&T customer had to continue meeting whatever its customer of record commitments were on the non transferred CSTPII/RVPP plan because these commitments on a traffic only transfer did not transfer to the new AT&T customer. Obviously AT&T would not allow under a traffic only transfer for the former customer to transfer some traffic and get rid of its customer of record commitments.

4) The new customer would have to assume the bad debt and minimum payment period for the billed telephone number locations (i.e. traffic) transferred from the former customer to the new customer. Only when a whole CSTPII/RVPP plan was transferred did the new AT&T customer also assume the former customers revenue and time commitment and the associated liabilities on those obligations (shortfall and termination liabilities).

5) AT&T attempted to retroactively change 2.1.8 under Transmittal Tr 8179. If it passed the FCC it would require that when a substantial percentage of end-user traffic was transferred it would force the entire plan to transfer which would force the transfer of the customer of record obligations for revenue and time commitment and their associated shortfall and termination liabilities. Obviously if these customer plan obligations already transferred under 2.1.8, AT&T would not have tried to retroactively provision Tr8179.

6) When Tr8179 failed AT&T replaced it with Tr9229 which mandated that the former customer would need to post security deposits when after a certain amount of end-user accounts were transferred from the former customer. The calculation of the security deposit required is based upon the non transferred remaining commitment. Obviously if the customer plan obligations transferred there would be no need to have tariffed security deposits on the transferring former AT&T customer.

7) The Court simply needs to address the fact that AT&T has never and will never be able to produce any evidence to support its position because none exists. AT&T's assertions are a complete fabrication as its own executives are on FCC public record stating that customer plan obligations have never transferred on a traffic only transfers, in the history of AT&T toll free service. These were the terms and conditions of 2.1.8., in January 1995. Therefore since plaintiffs followed 2.1.8 any change in terms and conditions would be prospective and the transaction would be grandfathered.

I understand the above statements are true and subjected to punishment if they are not.

Phillip Okin 1.30.2015
Phillip Okin President 800 Services, Inc.

EXHIBIT K

I Kenneth Grossfeld Certify as Follows on this date 2.14.15

1) My wife and I owned Touchtone 800 Program Inc. and I was the president .Touchtone was an AT&T aggregator owning the same CSTPII/RVPP 28% discount plans as Mr. Inga's companies. Touchtone was a successful and growing company until AT&T forced us out of business. Our volume commitment to AT&T was approximately one million dollars per month and we were meeting the commitment.

2) I understand that there is a case before the FCC in which it is looking to interpret a couple of AT&T tariff sections. One issue involves whether on a "traffic only " transfer. The issue is : does the new customer have to assume the non transferred plans revenue and time commitment. I am not a tariff expert but in the four years that I was an aggregator, the only time that the plan's revenue and time commitment transferred was when the entire plan transferred. If traffic only was transferred, then the new customer does not assume the plans revenue and time commitment.

3) The second issue that forced my company out of business was AT&T's interpretation of when a plan loses its grandfathered status to restructure its plans without liability. AT&T advised us that despite Touchtone having subscribed to a grandfathered plan, that the first time after the grandfathered date we would lose our grandfathered status. It is/was my understanding that we should have at least three years to restructure because a 3 year commitment was made. This is the only logical way that a reasonable man could have interpreted the plan's language, and it was on this basis that a business decision was made. I was in no position financially to fight AT&T so I ended up selling off my plan when I did not want to do that if the plans were grandfathered for three years.

4) I understand that the duration of how long a grandfathered plan can remain grandfathered is now before the FCC and Touchtone is anxiously waiting to get a ruling on this. If it is determined that the duration is at least 3 years, then AT&T put us out of business unlawfully based upon its interpretation of its tariff, which in my opinion AT&T interpreted unfairly, illegally and unreasonably to suit its' own purposes.

5) AT&T considered a restructure a new plan to contend that its customers lost grandfathered status. However under the tariff we were able to enroll AT&T customers that were under contracts called Location Specific Term Plans (LSTP's) with no penalty if we had a new plan. AT&T wanted a restructure considered as new to contend that we lost grandfathered status but on the same restructure AT&T claimed it was not new so we couldn't enroll AT&T customers on LSTP's. Basically AT&T conveniently interpreted its tariff to its favor when it was clear it had to be one way or the other and not the best of both AT&T worlds. Touchtone believes that the duration to restructure should be the life of the plan or at the very least 3 years as it subscribed to a 3 year contract.

6) AT&T did whatever possible to put all aggregators out of business and it would be nice if the FCC stopped protecting AT&T.

Based upon my knowledge of the facts and my experience I certify the above as true.

Kenneth Grossfeld
Kenneth Grossfeld

EXHIBIT L

Certification of Larry G. Shipp Jr.

I Larry G. Shipp Jr. do hereby state and affirm as follows:

1) I have not received or expect to receive any compensation for this certification .
2) I have been asked by Mr. Al Inga, of the Inga Companies, to further clarify the record regarding certain actions taken by or involving Combined Companies, Inc. ("CCI") that might be relevant to Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., and 800 Discounts, Inc. (collectively the Inga Companies) and their remaining case against AT&T; as well as to review and comment on recent court rulings and other proceedings which were just this past January called to my attention, to include, but not be limited to, Federal Communications Commission, Memorandum Opinion and Order, Internal File No. CCB/CPD 96-20 and United States Court of Appeals, For the District of Columbia Circuit, On Petition for Review of an Order of the Federal Communications Commission, No. 03-1431.
3) I was the president of CCI during all times relevant to the issues addressed herein, including the period that CCI was a co-plaintiff with the 4 Inga Companies against AT&T prior to CCI's settlement agreement with AT&T in July of 1997.
4) It should be noted, that after CCI's settlement with AT&T, Judge Hayden found in the case between the Inga Companies and CCI, that CCI did not compromise the Inga Companies continued claims against AT&T when settling with AT&T. Judge Hayden made this decision based upon her reviewing the sealed confidential AT&T-CCI settlement agreement.
5) CCI was an aggregator of AT&T services, and launched its business in early 1994 with a business plan to "aggregate" (or combine) other aggregators, including the Inga Companies to obtain more favorable rates and discounts than they could receive on their own.
6) The Inga Companies were CCI's largest company, and CCI agreed to provide the Inga Companies with 80% of any additional margin it would earn on Inga Companies accounts from plans that were transferred to CCI. It was CCI's plan to obtain these additional discounts through

a new Contract Tariff, or as a back-up, while waiting on the contract tariff, by placing the traffic in a deeply discounted plan CT 516 available from Public Service Enterprises (PSE).

7) The Inga Companies plans, including all its accounts, which were submitted to AT&T by CCI and the Inga Companies for transfer in December 1994 – which AT&T initially denied, and only did transfer them pursuant to a court order by the New Jersey District Court in May 1995, it became obvious that CCI's attempts to obtain a Contract Tariff from AT&T would not be successful.

8) So in January 1995, CCI went to its "back-up" plan and initiated a new transfer (a traffic only transfer) of accounts of most of its CSTPII/RVPP accounts, including most of the Inga Companies CSTPII/RVPP accounts which were within plans that were previously transferred to CCI, to the Contract Tariff 516 plan of Public Services Enterprises (PSE). This was done to achieve a greater margin of income and to further grow CCI's customer base by offering deeper discounts to new customers who could not obtain these deep discounts on their own. This would include not only AT&T 800 users, but Sprint and MCI 800 users as well.. The CSTPII/RVPP plans that CCI had offered a 28% discount and the CT 516 AT&T plan held by PSE had a 66% discount. The CT 516 was set up to have the end-users get 28% and the 38% supplemental discount would be paid by AT&T to PSE. PSE was to then pay CCI and the Inga Companies separately. This transfer of accounts (traffic) to PSE was denied by AT&T and is now the subject of an ongoing dispute between the Inga Companies and AT&T.

9) As mentioned earlier, CCI and the Inga Companies wanted their own Contract Tariff – and certainly qualified for one. However, while awaiting AT&T's decision, we knew we could earn a higher margin by simply assigning the traffic to CT 516 until we got our own Contract Tariff. We felt confident that we would get one since we were doing over $4 million per month in billing and CT 516 was only a $4.2 million per year commitment. However, AT&T did not provide us with a contract tariff of our own; and, additionally refused the account transfer (traffic only) request to CT 516 as well, although it was done properly under AT&T Tariff 2, Section 2.1.8.

10) As I have only now discovered, the FCC in its decision noted properly that the CCI account transfer, covered by its agreement with PSE, stated we could have the account traffic returned to us from PSE at any time within 30 days notice. This was agreed with PSE so as to allow CCI to meet any and all its commitments to AT&T without needing to restructure the plans it controlled, and as well, to insulate the transferred accounts from liability if PSE were to go into any default or encounter any other difficulty with AT&T. In which case by moving the traffic back, CCI would thereby be avoiding the impact of any potential PSE default or provisioning issue from affecting the end-users we had transferred.

11) Under many of AT&T's tariffs, including those governing PSE, and AT&T's Tariff 2 which governed CCI and the Inga Companies traffic, it was understood that if a plan incurs bad debt through some of its end-users, or is in shortfall, AT&T must first attempt to collect the debt from its customer who is the aggregator. Then if the aggregator does not pay, AT&T would off-set the debt obligation, usually after 90 days past due of any aggregator unpaid bill, from the RVPP or margin pool earned before paying the aggregator its margin. However, even if AT&T gave the aggregator only 30 days to pay, which was not their custom, AT&T's only option under its tariff was to then apply the debt against the Revenue Volume Pricing Plan (RVPP) or CT 516 pool of credits either of which were more than sufficient to meet the historical bad debt of our accounts. Additionally, it must be understood that even in the unlikely event shortfall charges if legitimate came into play, they are by tariff not even applied till fiscal year end; therefore it was possible to temporarily assign traffic back and forth – which is something aggregators, including the Inga Companies, had done many times before.

12) As per AT&T's Revenue at Risk Report at the time that we were denied transferring the traffic, CCI's plans volume was well above its volume obligation. Additionally these plans were all issued prior to June 17th 1994 anyway and were therefore forever immune from shortfall and termination obligations when we timely restructured them – which we did. In fact, there are dozens of audio tapes submitted to the District Court of many AT&T manager's who advised us that as long as the aggregator continued to use the same RVPP plan ID, which we did, it was a

grandfathered plan, forever immune from shortfall and termination charges. The plans were also immune from shortfall and termination charges owing to our filing a Tariff 2, section 2.5.7 claim, which waives these charges due to circumstances beyond the Customers Control. AT&T never refuted our section 2.5.7 application.

13) Restructuring was the common business term used in the business marketplace. It involved using AT&T's Network Services Commitment Form indicating an upgrade of a existing pre June 17, 1994 CSTPII/RVPP plan. The reason it was an upgrade was that the overall commitment to AT&T after the restructure was more than that prior to the restructure; however the yearly commitment went down due to stretching the plan over a longer time period. It was commonly known that on all pre June 17, 1994 plans ***time retired volume commitment*** no matter what the phone usage on the plans were when conducting a plan restructuring. This was ensured by always restructuring your plans, as allowed by AT&T's tariffs, successfully prior to any year-end anniversary "true-up" of the volume commitment for the various CSTPII/RVPP plans held by CCI.

14) The significance of having a pre June 17, 1994 plan **can not be understated.** And, as per the tariff if you wanted a new plan, you would be issued a new RVPP ID when you subscribed to a new CSTPII plan. If you simply upgraded an existing RVPP plan ID, as was allowed on all pre June 17th, 1994 CSTPII/RVPP plans such as ours, it was grandfathered and subject to the tariff laws that were effective when the plan was originally issued. Under the AT&T's tariff No.2 the terms restructuring and upgrading is defined as a "Discontinuance of a CSTPII/RVPP plan without Liability. In fact, it appears now that AT&T already knew this, as I find in just now reviewing what AT&T counsel Richard Brown said in AT&T's brief to the 3rd Circuit in AT&T's case against 800 Services, Inc., he admits that pre June 17th, 1994 plans qualified for restructuring to avoid shortfall and termination charges. Counsel Brown **inadvertently** supported the remaining Inga Companies case while presenting his case against 800 Services, Inc. AT&T claimed 800 Services, Inc had **post** June 17th 1994 plans, as opposed to CCI's plans which were **pre** June 17th 1994 originated.

15) When CCI did the traffic only transfer to PSE – which as mentioned is the subject of the ongoing dispute between the Inga Companies and AT&T, both CCI and PSE knew the requirements of AT&T Tariff 2, section 2.1.8, and therefore knew and agreed that all the obligations that were required by this specific request utilizing the AT&T Transfer of Service Agreement (TSA) were transferred by us and assumed by PSE. The AT&T TSA was followed verbatim as prescribed by AT&T tariff 2, section 2.1.8. Therefore, CCI intended, and PSE concurred that the Obligations transferred and assumed were (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s). The AT&T Transfer of Service Form (TSA) was used for several different types of transfers. Therefore as was the norm, I had to indicate on each of the TSA's, what type of transfer it was. These were "traffic only" transfers as opposed to plan transfers, as in the Inga Companies transfer to CCI whereby we specified the transfer of the accounts together with the plan. Traffic Only was the common explanation used. AT&T's conjecture that I was somehow attempting to modify the tariff is absolutely false

16) Traffic only transfers such as the one that we submitted pursuant to the AT&T Tariff 2, section 2.1.8 were very common practice among aggregators and AT&T business customers as well. So common, in fact, that AT&T ended up placing within its tariff, after denying our transfer request, a $50 charge for every traffic location assigned from a AT&T plan to another AT&T plan – although AT&T would waive this charge by offering from time-to-time promotions that waived these charges in exchange for certain commitments. Such as AT&T Promo 128 that waived the charges on the first 500 accounts per plan transferred.

17) AT&T wanted to go beyond the transfer of obligations called for in its tariffs to require the aggregators to also transfer potential shortfall and termination obligations when doing a traffic only transfer. In the case of the CCI/PSE transfers, however, termination was a moot point. The FCC in fact stated and CCI agrees that termination obligations were not at issue to stop the account assignment.

FCC Declaratory Ruling Footnote 56

Although AT&T also argues that the move also avoided the payment of tariff termination charges, id., it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

18) CCI also agrees with the FCC and NJ Federal District Court regarding the way CCI transferred the traffic in accordance with AT&T Tariff 2, section 2.1.8 when it initiated a "traffic only" transfer, as it relates to the non transferring of shortfall charges.

FCC Declaratory Ruling page 8 -9 para 11

If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. Further, CCI . (as well as the Inga companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans (Also *See First District Court Opinion* at 9.) Once all of its traffic was moved to PSE, CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans. AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question

19) Quite simply, this transfer should have been allowed. In fact, CCI believes, based on its recent review of the record, that AT&T was obligated, under the very tariff they sited to the DC Circuit Court to deny the "traffic only" transfer, to transfer the traffic as ordered by CCI.

20) The proof is found in examining Tariff 2, section 2.1.8 as it applied to CCI's request in January 1995, with a focus on the "key question" that originated in the NJ District Court:

"whether section **2.1.8** [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction."

All these other issues regarding what obligations get transferred were already understood by the District Court and the FCC. The DC Court correctly understood that section 2.1.8 does allow traffic transfers without the plan; however the DC Court never saw where in section 2.1.8 how a subset of the accounts could be transferred, and AT&T certainly wasn't pointing it out, thus leading to confusion on obligations assumed. But, the answer is right there in section 2.1.8. At the time of the traffic transfer transaction January 1995 Section 2.1.8 stated.

Transfer or Assignment- WATS, including ***ANY*** associated telephone number***(S)*** may be transferred or assigned to a new Customer, provided that: **(emphasis added),**

A. The Customer of Record (Former Customer) requests in writing that the company transfer or assign WATS to the new Customer.

B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

21) CSTPII/RVPP plans are AT&T discount plans for large customers with **many locations.** The fact that the tariff language allows for **ANY NUMBER(s)** (**Singular** or Plural), of account transfers, is clear indication that **any subset amount** of traffic, is expressly permissible under 2.1.8. If 2.1.8 only allowed plan transfers the word **ANY** would have to be changed to **ALL** and the singular option **NUMBER** would therefore not have been used. The tariff does not use the word: **"ALL"** it uses the word **"ANY"** before the word: "number**(s)**" of accounts to be transferred. Any of course could mean: One, or some, or most, without specification. Therefore it is clear that since 2.1.8 allows **"any number(S)"** of accounts less than **ALL NUMBERS** of accounts on the plan to be transferred, this obviously means one, some, or almost all of the traffic can be transferred without the plan. The word **number(s)** has in parenthesis the **(s)** which of course means that 1 single number or any amount of numbers of WATS accounts, can be transferred. If 2.1.8 only allowed the entire plan to be transferred then the section would have to say **all numbers**. Not the words **ANY** or the singular **NUMBER**(S).

22) Once this is understood then it is easier to understand what the phrase ALL THE OBLIGATIONS means in requirement B, and how by not recognizing how a subset of accounts can be moved leads to confusion as to what **all the obligations** means. If only account traffic is transferred, than all the obligations that just pertain to only the accounts that are transferred go from the former customer to the new customer. Shortfall and termination obligations are obligations of the aggregators' CSTPII/RVPP plan commitment. Simply stated the plan was not being transferred and therefore the shortfall and termination obligations associated with the plan should NOT be transferred. The fact that multiple Courts and the FCC could not fully decipher this tariff section defines the word: "ambiguous." This ambiguity even more justifies finding in favor of the Inga

companies because the law states that any ambiguity in the tariff must be construed against the maker of the tariff.

23) It was not until November of 1995 that AT&T added to its tariff that a percentage of shortfall and termination charges had to also be transferred on traffic only transfers. This tariff change was done only on a prospective basis and was not instituted until 11 months after the Jan 1995 traffic transfer to PSE. AT&T surely must have known then that no shortfall or termination liability were applicable for any of the plans from which CCI submitted for transfer to PSE in January of 1995. These plans were forever immune from shortfall and termination because AT&T knew the June 17th 1994 grandfather rule was in place some 6 months before we submitted this new traffic only transfer.. Furthermore, the FCC also stated that the plans were issued **prior to June 17th 1994** communicating the plans were immune from shortfall and termination charges.

FCC Ruling pg 2 para.2:

"**Prior to June 17th 1994,** the Inga Companies completed and signed AT&T's "Network Services Commitment Forms for WATS under AT&T's Customer Specific term plan II (CSTPII), a tariffed plan, which offered volume discounts off AT&T's regular tariff rates

24) AT&T's erroneous position that shortfall and termination obligations should have been transferred on traffic only transfers, as in the January 1995 CCI to PSE transfer, defeats itself. AT&T records indicate that there were several traffic only transfers from these same plans for years prior to the 1995 traffic transfer at issue. Therefore, if AT&T's position is correct then shortfall and termination liability obligations would have been transferred prior to January 1995, and there wouldn't have been any shortfall and termination liability left in January 1995 – because these obligations would have already been transferred away. The fact that these obligations did not transfer prior to January 1995 is another AT&T admission that shortfall and termination liabilities obviously do not transfer on traffic only transfers.

25) As the problems continued with AT&T, it began to appear to CCI that AT&T wanted all aggregators out of business. And perhaps one way to accomplish this end, was through the use of illegal remedies that crushed most aggregators, including CCI. In fact, the FCC in its

Memorandum Opinion and Order, Internal File No. CCB/CPD 96-20, which I am only now discovering, identified that AT&T utilized an illegal tariff remedy by permanently denying the traffic only transfer instead of the prescribed tariff remedy of simply suspending service. What I also just discovered and the FCC has stated, and was not found faulty by the DC Court of Appeals, is that if a carrier uses an illegal remedy it can no longer rely upon the underlying cause for its actions.

26) Other problems initiated by AT&T continued against CCI and the Inga Companies causing them to file a supplemental complaint with the Federal District Court in 1997 due to the shortfall and termination charges that were inflicted in June of 1996 against the CSTPII/RVPP plans accounts that remained on the plan after AT&T denied the accounts to be assigned to PSE in Jan of 1995 – even though these very plans were pre June 17, 2004 plans and were able to be restructured.

27) CCI and the Inga Companies advised AT&T on many occasions that our reading of their tariffs did not allow them to inflict shortfall charges against CCI customers, let alone against the plans, due to the plans having been timely restructured/Upgraded/Discontinued Without Liability. Additionally, even if the charges could be assumed to be warranted, the tariff clearly states that for billing purposes AT&T can only apply the shortfall to "reduce the discounts" that were made available due to the aggregator. This means that on a bill of $1,000 dollars that was receiving a 20% discount and therefore $200 off its bill, AT&T could only apply shortfall up to $200 dollars. In June of 1996 AT&T applied shortfall in multiples of the entire bill, thus the $1000 customer who would net an $800 bill after the $200 discount was provided, ended up getting a bill for around $5,000. CCI now believes, based on the legal filings we are only now reviewing, that this was also a potential illegal tariff remedy that was enacted by AT&T. And, if it was, AT&T should not have been able to rely upon the shortfall charges which were applied improperly on end-user bills even though the all the plans were pre June 17, 1994 plans and had been properly restructured.. Thus, it is very likely that the AT&T shortfall charges were not only not warranted, due to this potential illegal remedy application, but, as well, AT&T should not have been able to rely upon them in any event – even if they were warranted.

28) The infliction of these improper shortfall and termination charges against CCI and Inga Companies' end-users led to mass hysteria as the end-users contacted many states Attorney Generals, the FCC, their own counsel, the US Postal Service, and various states Board of Public Utilities and other such forums claiming that CCI had posted improper charges on their bills – which, of course, CCI had nothing to do with, and advised AT&T in advance that they should not do so either. And if that was not enough, not only did AT&T ignore our pleas, but when the end-users contacted AT&T they were told that it was the aggregators fault which destroyed all goodwill.

29) AT&T did remove the improper charges off the end-users bills, thereafter placing the alleged charges on CCI's bills, which I now gather from the record may have been a continuing part of an illegal remedy. In any event, with these actions by AT&T the damage was done as many of CCI's and Inga Companies customers, now unhappy, went back to AT&T without the aggregators discounts.

30) At that point all income to CCI was ceased from its plans, as AT&T had stopped paying us. The end-users anger, which was mis-directed at CCI and Inga Companies was causing accounts to disappear by the hundreds, administrative hearings to be initiated seemingly every day, and each event requiring more resources that our company could provide or withstand.

31) Therefore, in July 1997, CCI under extreme duress settled with AT&T – and then by the end of 1997, or early 1998, completely ceased its business operations.

32) In reaching a settlement with AT&T, CCI felt it could no longer survive. None-the-less, this decision to give up the fight was not an easy one to make as we were firmly convinced as to the merits of our case against AT&T. However, I sensed our legal efforts were stalled while legal costs continued to rise. But the real killer was trying to cope with the magnitude of the alleged shortfall charges, which CCI firmly believed should not have been used by AT&T against us because we had restructured our plans. Still we recognized that at the moment AT&T had all the cards, and was acting as both the judge and the jury. In fact, our requests to them to follow their tariffs in dealing with us were simply falling on deaf ears. So without any income from our

customers, and dwindling income from other telecom activities, together with administrative hearings mounting from the shortfall being placed on the end users bills, we found ourselves literally under siege.

33) As president of CCI and therefore at the forefront dealing with all the issues involving CCI and AT&T, CCI made every effort to communicate to AT&T that it was in violation of its tariffs, however, AT&T was totally non-responsive to CCI's complaints. I felt desperate, boxed in – with no where to go. So when a settlement was initially proposed by John Andrews of AT&T to settle with AT&T I, along with my other board members agreed to accept it – leaving behind my dreams, that surely would have been realized if the accounts were transferred to PSE as allowed by AT&T Tariffs, or alternatively if AT&T had given CCI and the Inga Companies a contract tariff for which we made every effort to obtain and for which we undeniably qualified to receive.

34) This Certification is provided only for clarification purposes, and at the Inga Companies request, as it relates to their ongoing case with AT&T, and reflects my personal review of recently discovered FCC filings, recently discovered appellate rulings from the United States Court of Appeals, for the District of Columbia Circuit, as well as other legal filings, together with a recounting my of actions and recollections.

35) This certification's use shall be limited to existing legal proceedings in which CCI was at one time a co-petitioner or co-plaintiff that continue to involve the Inga Companies. In all other instances, this certification will be treated as confidential and not be used, shared or reviewed by any other person, or for any other purpose without the express written consent of Larry G Shipp Jr.

36) Use of this certification constitutes acknowledgment of the limited use provision outlined above. Therefore in the event of any misuse of this certification, I shall be entitled to injunctive relief as a cumulative and not necessarily successive or exclusive remedy to a claim for monetary damages.

37) I affirm that all the foregoing is true including the statements made upon information and belief, which, as to those, I believe them also to be true..

Executed this date 7th of February 2006.

Larry G. Shipp Jr.

EXHIBIT M

WINBACK & CONSERVE PROGRAM

55 Main Street
Little Falls, NJ 07424
Voice Line 1-800-4LD-RATE
Voice Line 800-453-7283
Fax 800-338-0409

January 10, 1995

AT&T
Tom Umholtz
5000 Hadley Rd.
South Plainfield, NJ 07080

Re: AT&T offers special rates to corporate accounts that are doing much less volume than we are.

Dear Tom:

The following AT&T report shows AT&T VTNS customers who are receiving special discount pricing substantially below that given to me.

Mr. Umholtz, since I am doing substantially more volume than almost all of these major corporations, why has AT&T continued to refuse me equal treatment.

How can AT&T continue to be so discriminatory?

Sincerely,

Alfonse G. Inga

c: Charles Helein esq.
c: Curtis Meanor esq.
c: Edward Barillari esq.
c: Greg Brown
c: Maria Nascimiento
c: Bob Menno
c: Joseph Fitzpatrick
c: Deborah Sabourin FCC esq.
c: R.L. Smith FCC
c: David Nall FCC esq.
c: Greg Vogt FCC